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**FINAL REPORT TO THE 1979 SESSION
OF THE
GENERAL ASSEMBLY OF MARYLAND
ON STATE PROCUREMENT**



LEGISLATIVE REFERENCE

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PURCHASING AND PROCUREMENT POLICIES

TASK FORCE

General Assembly of Maryland

Annapolis, Maryland 21401

20683-1002

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FOR COPIES OF THIS REPORT, CONTACT:

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Delegate Charles R. Avara, *Vice Chairman*

Senator John A. Cade

Senator Victor Cushwa

Senator Robert L. Douglass

Senator Cornell N. Dypski

Senator Dennis F. Rasmussen

Delegate Raymond E. Beck

Delegate Charles S. Blumenthal

Delegate Nancy K. Kopp

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J. Hugh Nichols, Howard County Executive
J. Owen Robertson, Bethlehem Steel Corporation
Ronald S. Ryner, Maryland Society of the American Institute of Architects
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Purchasing and Procurement Policies Task Force

General Assembly of Maryland
Annapolis, Maryland 21401

March 19, 1979

The Honorable James Clark, Jr.
President of the Senate

The Honorable Benjamin L. Cardin
Speaker of the House of Delegates

RE: Final Report of Task Force on State Procurement

Gentlemen:

The Purchasing and Procurement Policies Task Force has concluded its two year study of State procurement processes, both statutory and regulatory, and it is our privilege to present this final report of the Task Force's findings, conclusions and recommendations. As a result of the failure of Senate Bill 748 of 1978, a bill introduced by the Task Force last session creating a new comprehensive Procurement Article in the Code, additional studies were performed to resolve some of the crucial concerns of last year.


The Task Force has conducted an exhaustive evaluation of existing and proposed procurement law and regulations over the past two years. 34 public meetings have been conducted; 24 by the Task Force and 5 each by 2 special subcommittees. Literally hundreds of witnesses have been heard from on the subject of procurement.


The results of the Task Force's work is expressed in the form of 3 bills and 1 joint resolution introduced in both the House and Senate. The principle end product of the the Task Force is a new, comprehensive Procurement Article to be designated Article 21 in the Code. Sufficient policy direction and guidelines have been proposed in this legislation to aid executive branch agencies in formulating and promulgating uniform and standard procurement regulations which should improve the overall efficiency and effectiveness of the State acquisition process as well as provide significant cost savings. The two other bills introduced by the Task Force deal with corrections to existing procurement law should the omnibus bill be enacted and the architect and engineer selection statutes. The joint resolution requests legislative study of property disposal and enterprise activities by the State.

The Task Force was aided in its work by an Advisory Board comprised of members of the public; the professions; the commercial sector; Federal, State and local government procurement officials; attorneys from the Maryland State Bar Association's Special Committee on State and Local Public Contract Law; several Counsels and Assistant Attorneys General from the State Law Department; certain State agency administrators and executives; and numerous legislative staff support personnel. We are most appreciative of the valuable service and advice rendered by these individuals for which they should be highly commended.

We as well as the other members of the Task Force would be pleased to meet with you, the members of the legislature, the Governor and members of the Executive to discuss our report and proposed legislative program for 1979.

Respectfully yours,


Victor L. Crawford, Chairman


Charles R. Avara, Vice Chairman

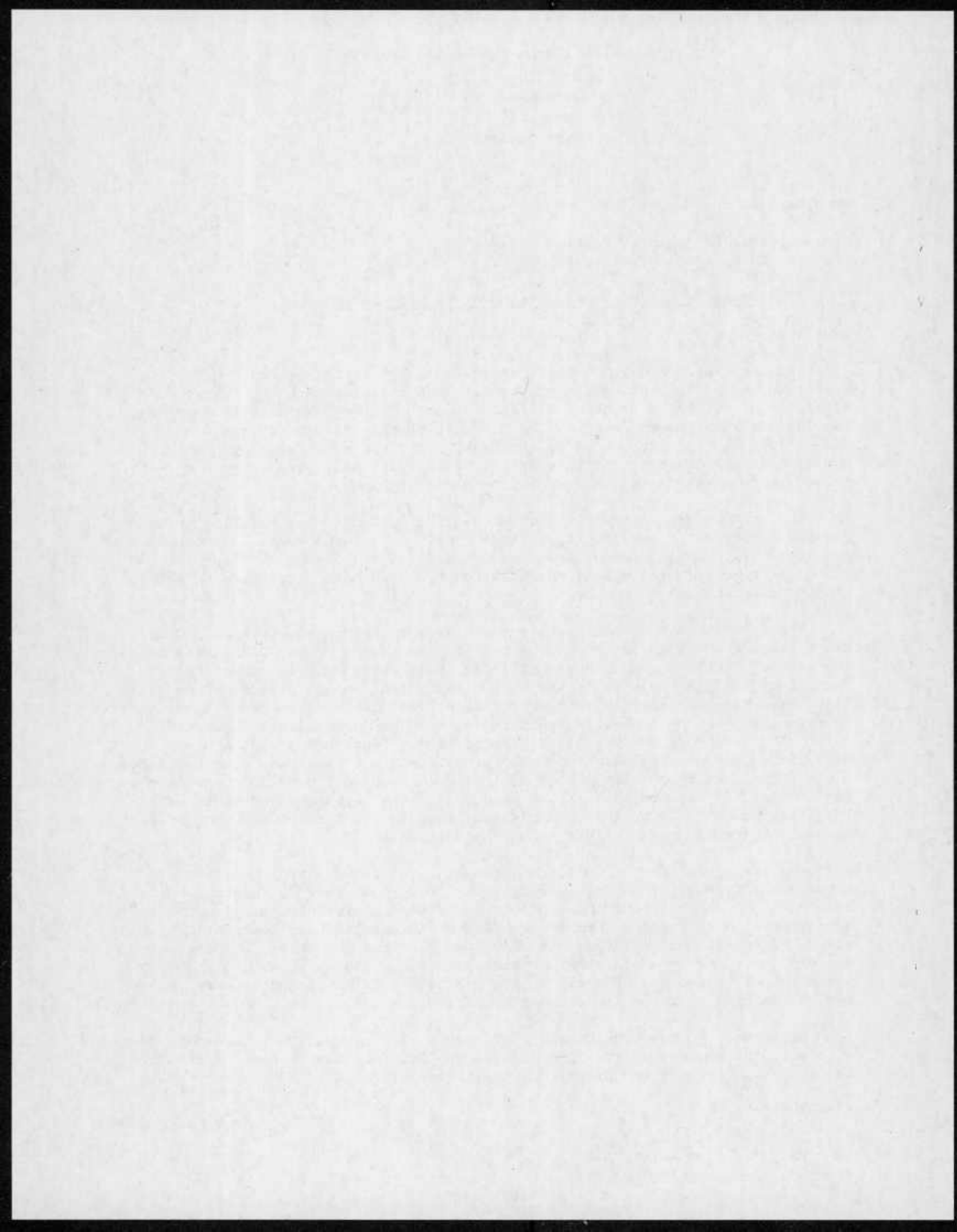
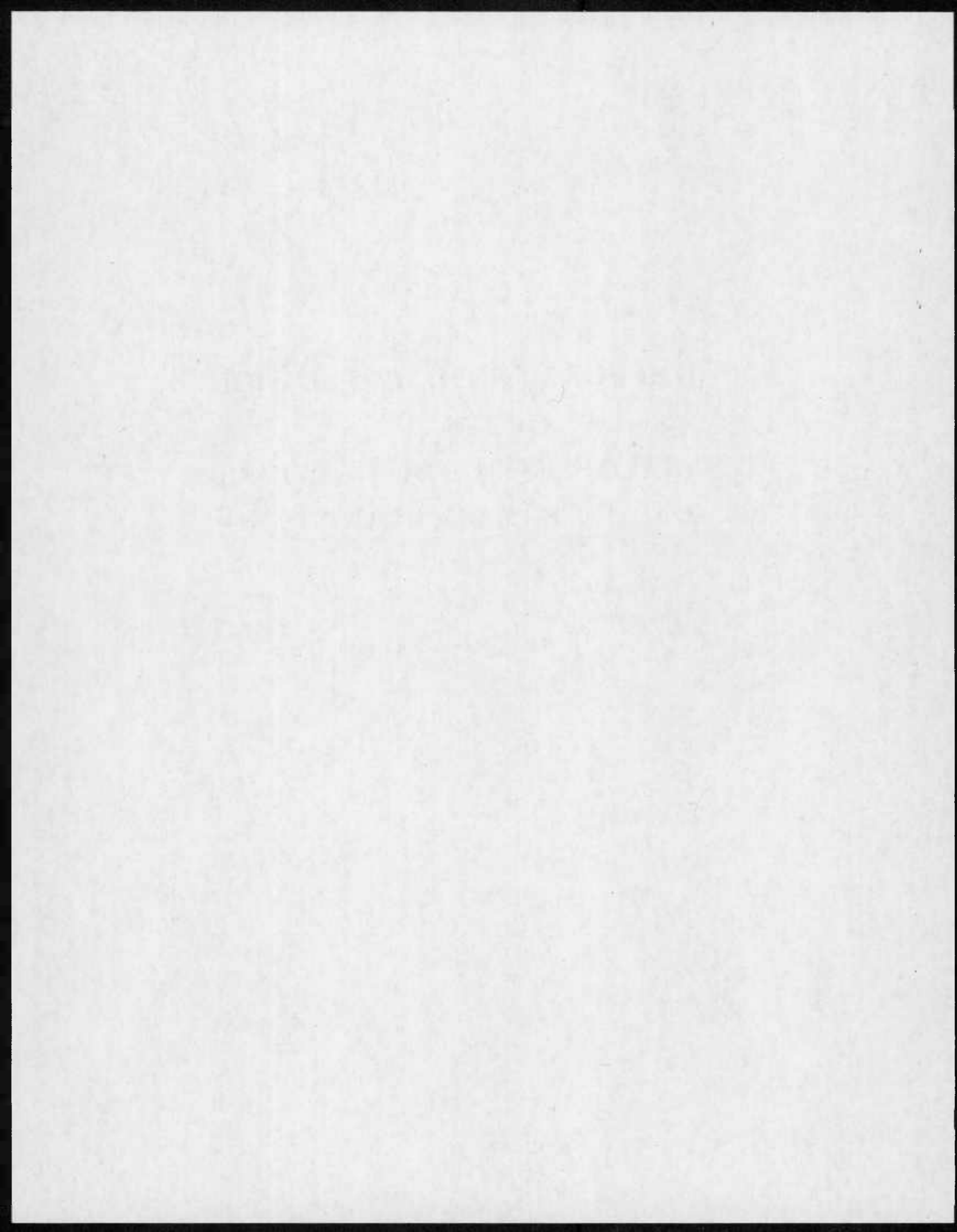


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**FINAL REPORT TO THE 1979 SESSION
OF THE
GENERAL ASSEMBLY OF MARYLAND
ON STATE PROCUREMENT**



LEGISLATIVE REPORT ON STATE PROCUREMENT

Origin and Charter of the Task Force

The Purchasing and Procurement Policies Task Force is a special, joint committee of the legislature which was created by the Senate President and Speaker of the House of Delegates in accordance with Joint Resolution 28¹ of the Acts of 1977. Its mission in that resolution was:

" to bring greater coordination, simplicity and uniformity of the State purchasing and procurement processes, to consolidate and integrate the diverse purchasing and procurement laws and regulations, and to make recommendations for those processes which would be included in the laws and those which should be included in the regulations".

The presiding officers of the General Assembly reconstituted the Task Force for the 1978 interim in light of the defeat of Senate Bill 748 of the 1978 Session. Senate Bill 748, the principle end product of the Task Force's work during the 1977 interim, proposed a comprehensive new Procurement Article in the Annotated Code of Maryland. The proposed Procurement Article established some broad public policies concerning the State's purchasing functions and provided guidance for the formulation of regulations to be adopted by the State Procurement Board as required by the Act. The bill passed the Senate with a unanimous vote and died in the House Committee on Appropriations due to lack of time for deliberations during the closing days of the session coupled with a large volume of amendments made to it in the Senate Constitutional and Public Law Committee.

¹House Joint Resolution 19 sponsored by the House Committee on Appropriations. Adopted by the General Assembly and signed by Governor Mandel on May 10, 1977.

Membership of the Task Force

Originally, under Resolution 28, the Task Force was comprised of ten members: five from the Senate and five from the House. Senator Crawford was appointed Chairman and Delegate J. Hugh Nichols was appointed Vice Chairman in May 1977. In 1978 after it was recommissioned, the Task Force was expanded to twelve legislative members; six from each house. Present membership of the Task Force is listed in the front of this report.

Creation of Advisory Board to Counsel Task Force

The original version of Resolution 28 specified that in addition to the legislative members on the Task Force, eleven other members must be appointed and should broadly represent the public, the professions, the manufacturers, and governmental officials. Although the provision for non-legislative members was amended out of the final version of the resolution, the Task Force, nonetheless, appointed an informal, non-voting, uncompensated, ad hoc Advisory Board to participate and counsel the Task Force membership in deliberations. In addition to the Advisory Board, attorneys from the Maryland State Bar Association's Special Committee on State and Local Public Contract Law and many counsels and Assistant Attorneys General from the State Law Department were active participants. All individuals listed in the front of this report have been quite active and extremely valuable in providing information to the Task Force.

Public Hearings, Staff Investigations & Activities of Task Force

The Task Force conducted 16 public hearings, work sessions, special meetings, staff briefings and investigations during the 1977 interim. This work resulted in the introduction of Senate

Bill 748 which ultimately failed to pass. The original draft of the legislation was modeled after the American Bar Association's Model Procurement Code. Since 1975, the U.S. Justice Department has provided financial support to the ABA procurement project predicated predominately upon the premise that adoption of some form of the Code by State and local jurisdictions will tend to reduce the potential for illegal and unethical behavior in the public procurement process and to restore public confidence in public fund management by governmental entities.

Prior to introduction of Senate Bill 748 in the 1978 Session, it was rewritten three times to more closely correspond to the present Maryland State procurement system.

During hearings on the bill last year, the Acting Governor, the Comptroller, the Treasurer, and the Secretaries of Transportation and General Services expressed concern over certain items in the proposed Procurement Article. These were addressed during the 1978 interim and resolved by the legislative members.

Eight public meetings of the Task Force were held during the 1978 interim, exclusive of two special subcommittees that were created to review certain segments of procurement law.

A key issue raised by the architectural and engineering professions was that there should be some review and assessment made of the effectiveness and adequacy of the Joint Maryland Architectural and Engineering Services Act of 1974², as amended to date, and the rules and regulations adopted by the two selection boards³ pursuant to this Act.

²Article 41, §§231N - 231EE and Transportation Article, §§2-301 - 2-318.

³General Professional Services Selection Board under Art. 41 and Transportation Professional Services Selection Board under Trans. Art.

The Task Force elected to form a special ad hoc subcommittee to review the concerns of the professions. Appointed to chair this subcommittee was Senator John A. Cade. Senator Victor Cushwa was appointed from the Senate, and Delegates Charles S. Blumenthal and Robert R. Neall were appointed from the House. Various other advisory board members were also appointed to counsel the subcommittee.⁴

On October 16, 1978, the Subcommittee presented to the Task Force the results of their comprehensive study of these processes. They made 18 recommendations to the Task Force some affecting the law and others the regulations.

Another special ad hoc subcommittee was created by the Task Force to examine current State procurement laws and to correlate them to the proposed Procurement Article. The charge of the subcommittee was to review the State's current purchasing statutes with the view of recommending the repeal, transfer, or modification of appropriate statutes as they relate to the new omnibus procurement legislation. Delegate Neall chaired the subcommittee and Senator Cushwa was Vice Chairman. Senator Dypski and Delegate Kopp also served on the committee. Certain advisory board members were also appointed.⁵

On December 20, 1978, the Subcommittee reported their recommendations to the Task Force. Their review encompassed 383 laws in 39 different Articles of the Code. There were 74 citations which were identified as irrelevant to the omnibus law, 78 were recommended for transfer, 75 were questionable as to agency

⁴Advisory members were Messrs. Klasmeier, Moser, Zemansky, Mills, Kordish, Linaweaver, and Ryner.

⁵Advisory members were Messrs. Huddles, Israel, Klasmeier, Levy, Martin, Moser, and Peddicord.

applicability under the article, 118 were compatible, and 38 were in conflict with the proposed Procurement Article. The Subcommittee report contained 10 specific recommendations on the 383 statutes.

Summary of Conclusions and Recommendations

Based upon the exhaustive study conducted by the Task Force over the past two years on existing laws and regulations concerning State procurement of supplies, services and construction, the members find that there is a genuine need to consolidate, simplify and enhance the State's procurement laws and regulations. A proposed Procurement Article has been introduced by the Task Force for consideration by the 1979 State legislature and the Governor. Exhibit A reflects this legislative proposal starting on page A-1 of this report.

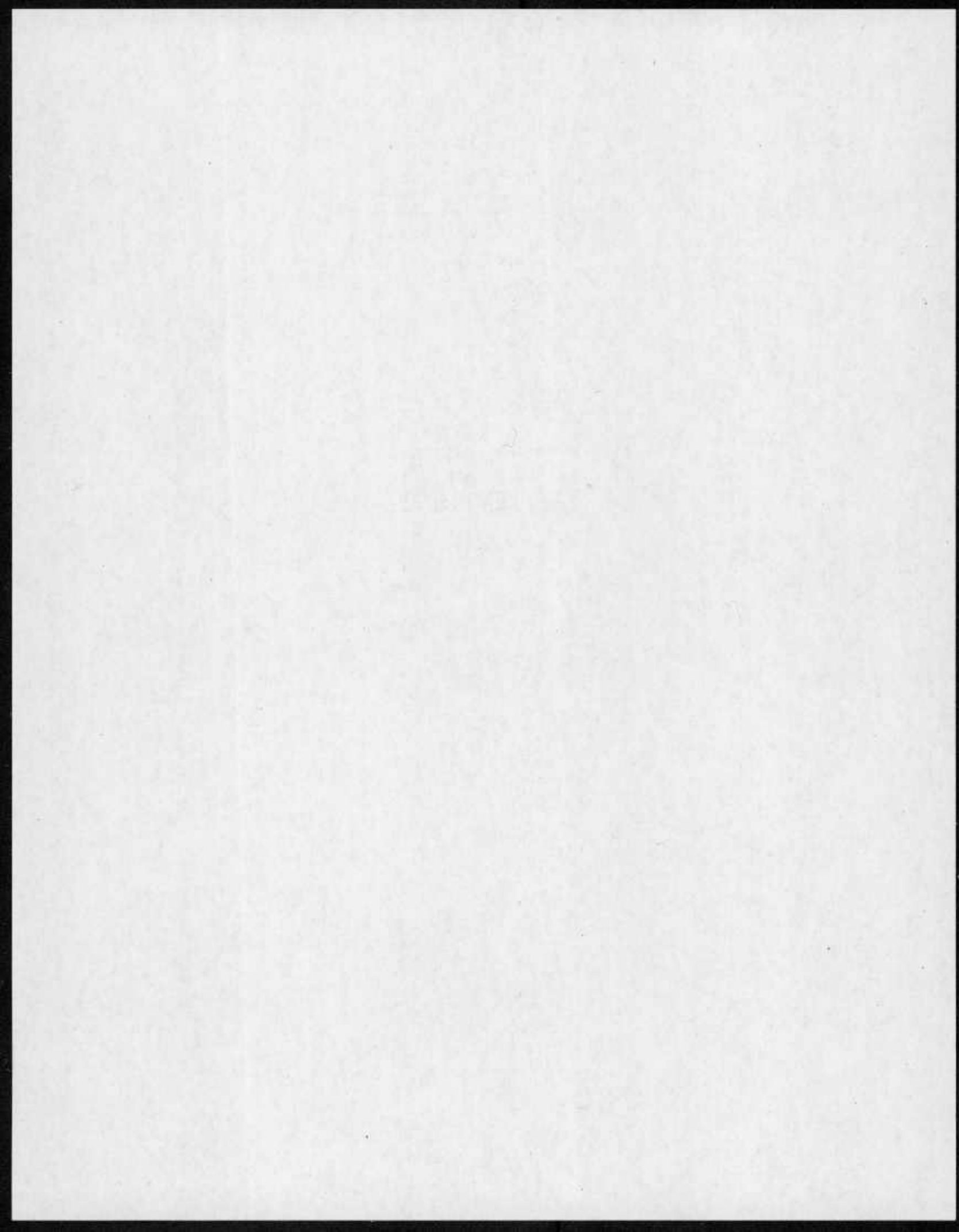
Exhibit B on page A-33 of this report has been drafted to effect the recommendations of the Subcommittee to Review Current State Procurement Laws chaired by Delegate Neall. It is a contingent bill effective only if the omnibus bill is enacted. It transfers certain sections already codified in the law to the new Article, changes certain references to the Board of Public Works to the State Procurement Board, and modifies certain laws for conformity to the new procurement article.

On page 67 of this report is Exhibit C which implements the recommendations of the Cade A&E Subcommittee which were adopted by the Task Force. It requires that one of the members appointed by the Governor to the Transportation and General Professional Services Selection Boards be a practicing architect or engineer and selected from a list of nominees from the professions. The bill deletes the requirement for uniformity in the regulations adopted by the two Boards. It changes the GPSSB law to conform to the TPSSB concerning public notice. The bill mandates a public policy preference for

competitive procurement of A&E services for all contracts, not just those exceeding \$25,000. A general waiver provision is also added which would permit the Boards to grant a waiver of the full competitive process when it is in the best interest of the State.

The procurement legislation did not address disposal of State property or various enterprise activities engaged in by certain State agencies. A resolution has been prepared and introduced to request the Legislative Policy Committee to conduct studies into these areas and to report their recommendations to the legislature and the Governor by the end of this year. The Joint Resolution is Exhibit D in the appendix to this report.

APPENDICES



SENATE OF MARYLAND

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No. 659

3800-02100

By: Senators Crawford, Cade, Cushwa, Douglass, Dypski, and Rasmussen (Purchasing and Procurement Policies Task Force)	26 27
Introduced and read first time: February 15, 1979	29
Assigned to: Budget and Taxation	31

A BILL ENTITLED	36
AN ACT concerning	40
State Procurement of Supplies, Services, and Construction	43
FOR the purpose of revising, restating, and recodifying the laws of this State relating and pertaining to State procurement of supplies, services, and construction; establishing a new Article in the Code entitled "Article 21 - Procurement"; providing that the Board of Public Works is to serve as the State Procurement Board; authorizing the Board to promulgate regulations, establish policies consistent with that Article, and monitor the application of that Article; establishing an Office of State Procurement headed by the Procurement Administrator; providing for the appointment, qualifications, and authority of the Administrator; requiring that contracts be entered into in accordance with that Article; establishing the procedures which govern the award of State procurement contracts; declaring a policy preference for competitively bid contracts and requiring certain determinations before other methods of awarding contracts may be used; requiring the issuance and maintenance of standard specifications for procurement of supplies, services, and construction to assure maximum practicable competition in procurement; prohibiting the use of a certain type of contract; stating a preference for certain other types of contracts; specifying the manner of changing State procurement contracts; requiring the Board to promulgate regulations providing for multiyear contracts and cooperative procurement; abolishing the Transportation Board of Contract Appeals and establishing the Maryland State Board of Contract Appeals; providing for the settlement of contract disputes, the appeal of certain of these disputes to the State Procurement Board and others to the Maryland State Board of Contract Appeals; providing that this Article shall repeal inconsistent laws to the extent of	47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 66 67 68 69 70 72 73

 EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
 [Brackets] indicate matter deleted from existing law.
 Numerals at right identify computer lines of text.

the inconsistency; transferring certain provisions of existing Articles of the Code relating to these matters to the new Procurement Article; providing for a delayed effective date for certain provisions; and generally relating to State procurement law.	74 75 77
BY adding	79
New Article 21 - Procurement	82
Annotated Code of Maryland	83
(1973 Replacement Volume and 1978 Supplement)	84
BY transferring	86
Article 41 - Governor - Executive and Administrative Departments	89
Section 231-IB	91
Annotated Code of Maryland	92
(1978 Replacement Volume and 1978 Supplement)	93
to be	95
Article 21 - Procurement	98
Section 3-405	99
Annotated Code of Maryland	100
(1973 Replacement Volume and 1978 Supplement)	101
BY transferring	104
Article - Real Property	107
Section 9-113	109
Annotated Code of Maryland	111
(1974 Volume and 1978 Supplement)	112
to be	115
Article 21 - Procurement	118
Section 3-504	120
Annotated Code of Maryland	122
(1973 Replacement Volume and 1978 Supplement)	123
BY transferring	126
Article 41 - Governor - Executive and Administrative Departments	129
Section 10A(a), (b), (c), and (d), respectively	131
Annotated Code of Maryland	132
(1978 Replacement Volume and 1978 Supplement)	133
to be	136

the inconsistency; transferring certain provisions of existing Articles of the Code relating to these matters to the new Procurement Article; providing for a delayed effective date for certain provisions; and generally relating to State procurement law.	74 75 77
BY adding	79
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Article 41 - Governor - Executive and Administrative Departments	89
Section 231-IB	91
Annotated Code of Maryland	92
(1978 Replacement Volume and 1978 Supplement)	93
to be	95
Article 21 - Procurement	98
Section 3-405	99
Annotated Code of Maryland	100
(1973 Replacement Volume and 1978 Supplement)	101
BY transferring	104
Article - Real Property	107
Section 9-113	109
Annotated Code of Maryland	111
(1974 Volume and 1978 Supplement)	112
to be	115
Article 21 - Procurement	118
Section 3-504	120
Annotated Code of Maryland	122
(1973 Replacement Volume and 1978 Supplement)	123
BY transferring	126
Article 41 - Governor - Executive and Administrative Departments	129
Section 10A(a), (b), (c), and (d), respectively	131
Annotated Code of Maryland	132
(1978 Replacement Volume and 1978 Supplement)	133
to be	136

Article 21 - Procurement	139
Section 8-101 through 8-104, respectively, to be under the new title "Title 8. Administrative and Civil Remedies" and the subtitle "Subtitle 1. Defense of Sovereign Immunity in Actions in Contract"	141 142 143
Annotated Code of Maryland	145
(1973 Replacement Volume and 1978 Supplement)	146
BY transferring	149
Article 41 - Governor - Executive and Administrative Departments	152
Section 231G-2 and 231M-1, respectively	154
Annotated Code of Maryland	155
(1978 Replacement Volume and 1978 Supplement)	156
to be	159
Article 21 - Procurement	162
Section 9-101 to be under the new title "Title 9. Socio-Economic Policies" and the subtitle "Subtitle 1. Small Business Set Asides"; and 9-201 to be under the new subtitle "Subtitle 2. Disadvantaged Business Preference", respectively	164 165 166
Annotated Code of Maryland	168
(1973 Replacement Volume and 1978 Supplement)	169
BY transferring	172
Article 30 - Deaf, Mute or Blind	175
Section 6A and 6B, respectively	177
Annotated Code of Maryland	179
(1976 Replacement Volume and 1978 Supplement)	180
to be	183
Article 21 - Procurement	186
Section 9-202 and 9-203, respectively	188
Annotated Code of Maryland	190
(1973 Replacement Volume and 1978 Supplement)	191
BY transferring	194
Article 27 - Crimes and Punishments	197
Section 681	199
Annotated Code of Maryland	201
(1976 Replacement Volume and 1978 Supplement)	202

to be	205
Article 21 - Procurement	208
Section 9-204	210
Annotated Code of Maryland	212
(1973 Replacement Volume and 1978 Supplement)	213
BY transferring	216
Article 41 - Governor - Executive and Administrative Departments	219
Section 231-I and 231-IA, respectively	221
Annotated Code of Maryland	222
(1978 Replacement Volume and 1978 Supplement)	223
to be	226
Article 21 - Procurement	229
Section 9-301 to be under the new subtitle "Subtitle 3. Resident Business Preference" and 9-401 to be under the new subtitle "Subtitle 4. Priorities Among Preferences", respectively	231
Annotated Code of Maryland	233
(1973 Replacement Volume and 1978 Supplement)	235
BY transferring	239
Article 100 - Work, Labor and Employment	242
Section 96, 97, 97A, 98 through 105, 105A, 106, 107, and 107A, respectively	244
Annotated Code of Maryland	246
(1964 Replacement Volume and 1978 Supplement)	247
to be	250
Article 21 - Procurement	253
Section 9-501 through 9-515, respectively, to be under the new subtitle "Subtitle 5. Contracts for Public Works"	255
Annotated Code of Maryland	256
(1973 Replacement Volume and 1978 Supplement)	258
BY transferring	259
Article - Transportation	262
Section 2-301 through 2-318, respectively	265
Annotated Code of Maryland	267
(1977 Volume and 1978 Supplement)	269
	270

to be	273
Article 21 - Procurement	276
Section 10-101 through 10-118, respectively, to be	278
under the new title "Title 10. Procurement of	279
Architect-Engineer Services" and the subtitle	
"Subtitle 1. Transportation Agencies -	280
Architect-Engineer Services"	
Annotated Code of Maryland	282
(1973 Replacement Volume and 1978 Supplement)	283
BY transferring	286
Article 41 - Governor - Executive and Administrative	289
Departments	
Section 231N through 231EE, respectively	291
Annotated Code of Maryland	292
(1978 Replacement Volume and 1978 Supplement)	293
to be	296
Article 21 - Procurement	299
Section 10-201 through 10-218, respectively, to be	301
under the new title "Title 10. Procurement of	302
Architect-Engineer Services" and the subtitle	
"Subtitle 2. General Using Authorities -	303
Architect-Engineer Services"	
Annotated Code of Maryland	305
(1973 Replacement Volume and 1978 Supplement)	306
BY repealing	308
Chapter 418 of the Acts of the General Assembly of 1978	310
SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF	314
MARYLAND, That section(s) of the Annotated Code of Maryland	315
be repealed, amended, or enacted to read as follows:	
ARTICLE 21 - PROCUREMENT	318
TITLE 1. GENERAL PROVISIONS	320
SUBTITLE 1. DEFINITIONS OF TERMS USED IN THE ARTICLE	322
1-101.	325
(A) IN THIS ARTICLE, THE FOLLOWING WORDS HAVE THE	328
MEANINGS INDICATED UNLESS:	
(1) THE CONTEXT CLEARLY REQUIRES A DIFFERENT	330
MEANING; OR	
(2) A DIFFERENT DEFINITION IS ADOPTED FOR A	332
PARTICULAR TITLE OR PROVISION.	

(B) "ADMINISTRATOR" MEANS THE PERSON HOLDING THE POSITION OF PROCUREMENT ADMINISTRATOR IN THE OFFICE OF STATE PROCUREMENT UNDER THE STATE PROCUREMENT BOARD.	334 335
(C) "BOARD" MEANS THE BOARD OF PUBLIC WORKS FUNCTIONING AS THE STATE PROCUREMENT BOARD, EXCEPT AS USED IN TITLES 8 AND 10.	337 338
(D) "BUSINESS" MEANS ANY CORPORATION, PARTNERSHIP, INDIVIDUAL, SOLE PROPRIETORSHIP, JOINT VENTURE, OR ANY OTHER LEGAL ENTITY THROUGH WHICH BUSINESS IS CONDUCTED.	340 342
(E) "CHANGE ORDER" MEANS A WRITTEN ORDER SIGNED BY THE RESPONSIBLE PROCUREMENT OFFICER, DIRECTING A CONTRACTOR TO MAKE CHANGES WHICH THE CHANGES CLAUSE OF A CONTRACT AUTHORIZES THE PROCUREMENT OFFICER TO ORDER WITHOUT THE CONSENT OF THE CONTRACTOR.	344 345 346 348
(F) (1) "CONSTRUCTION" MEANS THE PROCESS OF BUILDING, ALTERING, REPAIRING, OR IMPROVING ANY PUBLIC STRUCTURE, BUILDING, OR OTHER IMPROVEMENT TO ANY PUBLIC REAL PROPERTY.	350 352
(2) "CONSTRUCTION" DOES NOT INCLUDE THE ROUTINE OPERATION, ROUTINE REPAIR, OR ROUTINE MAINTENANCE OF EXISTING STRUCTURES, BUILDINGS, OR OTHER IMPROVEMENTS TO REAL PROPERTY.	354 356
(G) (1) "CONTRACT" MEANS EVERY AGREEMENT ENTERED INTO BY A STATE AGENCY FOR THE PROCUREMENT OF SUPPLIES, SERVICES, CONSTRUCTION, OR ANY OTHER ITEM AND INCLUDES:	358 359
(I) AWARDS AND NOTICES OF AWARD;	361
(II) CONTRACTS OF A FIXED-PRICE, COST-REIMBURSEMENT, COST-PLUS-A-FIXED-FEE, FIXED-PRICE INCENTIVE, OR COST-PLUS INCENTIVE FEE TYPE;	363 364
(III) CONTRACTS PROVIDING FOR THE ISSUANCE OF JOB OR TASK ORDERS;	366
(IV) LEASES;	368
(V) LETTER CONTRACTS;	370
(VI) PURCHASE ORDERS;	372
(VII) SUPPLEMENTAL AGREEMENTS WITH RESPECT TO ANY OF THESE; AND	374
(VIII) GRANTS AND ORDERS.	376
(2) "CONTRACT" DOES NOT INCLUDE COLLECTIVE BARGAINING AGREEMENTS WITH EMPLOYEE ORGANIZATIONS.	378 379

(H) "CONTRACT MODIFICATION" MEANS ANY WRITTEN ALTERATION IN THE SPECIFICATIONS, DELIVERY POINT, DATE OF DELIVERY, CONTRACT PERIOD, PRICE, QUANTITY, OR OTHER PROVISION OF ANY EXISTING CONTRACT, WHETHER ACCOMPLISHED BY UNILATERAL ACTION IN ACCORDANCE WITH A CONTRACT PROVISION, OR BY MUTUAL ACTION OF THE PARTIES TO THE CONTRACT. IT INCLUDES BILATERAL ACTIONS SUCH AS SUPPLEMENTAL AGREEMENTS, AND UNILATERAL ACTIONS SUCH AS CHANGE ORDERS, ADMINISTRATIVE CHANGES, NOTICES OF TERMINATION, AND NOTICES OF THE EXERCISE OF A CONTRACT OPTION.	381 383 385 387 389 390 391
(I) "CONTRACTOR" MEANS ANY PERSON HAVING A CONTRACT WITH A STATE AGENCY. CONTRACTOR DOES NOT INCLUDE EMPLOYEES WITH LABOR CONTRACTS.	393 394
(J) "PERSON" MEANS ANY INDIVIDUAL, BUSINESS, UNION, COMMITTEE, CLUB, OR OTHER ORGANIZATION.	396 397
(K) "PROCURE" MEANS BUYING, RENTING, LEASING, PURCHASING, OR OTHERWISE OBTAINING ANY SUPPLIES, SERVICES, OR CONSTRUCTION. "PROCURE" INCLUDES ALL FUNCTIONS THAT PERTAIN TO THE OBTAINING OF ANY PUBLIC PROCUREMENT, INCLUDING DESCRIPTION OF REQUIREMENTS, SELECTION, AND SOLICITATION OF SOURCES, PREPARATION AND AWARD OR CONTRACT, AND ALL PHASES OF CONTRACT ADMINISTRATION.	399 401 403 405
(L) "PROCUREMENT AGENCY" MEANS ANY STATE AGENCY WHICH IS AUTHORIZED BY LAW OR REGULATIONS TO PROCURE OR CONTRACT.	407 409
(M) "PROCUREMENT OFFICER" MEANS ANY PERSON AUTHORIZED BY A STATE AGENCY IN ACCORDANCE WITH LAW OR REGULATIONS TO ENTER INTO OR ADMINISTER CONTRACTS OR MAKE WRITTEN DETERMINATIONS AND FINDINGS WITH RESPECT TO THEM. THE TERM ALSO INCLUDES AN AUTHORIZED REPRESENTATIVE ACTING WITHIN THE LIMITS OF AUTHORITY.	411 413 415 416
(N) "REGULATION" HAS THE SAME DEFINITION AS "RULE" IN THE ADMINISTRATIVE PROCEDURE ACT OF THE CODE.	418 419
(O) "SERVICES" MEANS THE RENDERING, BY A CONTRACTOR, OF ITS TIME AND EFFORT RATHER THAN THE FURNISHING OF A SPECIFIC PHYSICAL PRODUCT OTHER THAN REPORTS INCIDENTAL TO THE REQUIRED PERFORMANCE OF SERVICES. THIS INCLUDES BUT IS NOT LIMITED TO THE CONTRACTUAL SERVICES PROVIDED BY ARCHITECTS, ENGINEERS, ATTORNEYS, ACCOUNTANTS, PHYSICIANS, CONSULTANTS, AND OTHER PROFESSIONAL PERSONS.	421 423 424 425 426
(P) "STATE AGENCY" MEANS ANY AGENCY, ASSOCIATION, BOARD, BUREAU, COLLEGE, COMMISSION, COMMITTEE, COUNCIL, FOUNDATION, FUND, DEPARTMENT, INSTITUTE, INSTITUTION, PUBLIC CORPORATION, SERVICE, TRUST, UNIVERSITY, OR OTHER UNIT OF THE EXECUTIVE BRANCH OF THE STATE GOVERNMENT AND INCLUDES ANY SUBUNIT WITHIN ANY OF THESE UNITS.	428 429 430 431 432
(Q) "SUPPLEMENTAL AGREEMENT" MEANS ANY CONTRACT MODIFICATION WHICH IS ACCOMPLISHED BY THE MUTUAL ACTION OF THE PARTIES.	434 436

(R) "SUPPLIES" MEANS ALL PROPERTY, INCLUDING 438
EQUIPMENT, LEASES ON REAL PROPERTY, PRINTING AND INSURANCE, 439
EXCEPT LAND OR A PERMANENT INTEREST IN LAND. 440

(S) "USING AGENCY" MEANS ANY STATE AGENCY WHICH USES 442
ANY SUPPLIES, SERVICES, OR CONSTRUCTION UNDER THIS ARTICLE. 443

SUBTITLE 2. PURPOSES, CONSTRUCTION, AND APPLICABILITY 446
1-201. 449

(A) UNLESS OTHERWISE INDICATED, THIS ARTICLE SHALL BE 451
LIBERALLY CONSTRUED AND APPLIED TO PROMOTE ITS UNDERLYING 452
PURPOSES AND POLICIES. 453

(B) THE UNDERLYING PURPOSES AND POLICIES OF THIS 455
ARTICLE ARE, AMONG OTHERS TO:

(1) PROVIDE FOR INCREASED PUBLIC CONFIDENCE IN 457
THE PROCEDURES FOLLOWED IN PUBLIC PROCUREMENT; 458

(2) INSURE THE FAIR AND EQUITABLE TREATMENT OF 460
ALL PERSONS WHO DEAL WITH THE PROCUREMENT SYSTEM OF THIS 462
STATE;

(3) SIMPLIFY, CLARIFY, AND MODERNIZE THE LAW 464
GOVERNING PROCUREMENT BY THIS STATE;

(4) PERMIT THE CONTINUED DEVELOPMENT OF 466
PROCUREMENT REGULATIONS, POLICIES, AND PRACTICES; 467

(5) PROVIDE INCREASED ECONOMY IN STATE 469
PROCUREMENT ACTIVITIES AND TO MAXIMIZE TO THE FULLEST EXTENT 470
THE PURCHASING POWER OF THE STATE;

(6) PROVIDE SAFEGUARDS FOR THE MAINTENANCE OF A 472
PROCUREMENT SYSTEM OF QUALITY AND INTEGRITY; AND 474

(7) FOSTER EFFECTIVE BROAD BASED COMPETITION 476
THROUGH SUPPORT OF THE FREE ENTERPRISE SYSTEM. 477

1-202. 480

EVERY CONTRACT OR DUTY WITHIN THIS ARTICLE IMPOSES AN 482
OBLIGATION OF GOOD FAITH IN ITS PERFORMANCE OR ENFORCEMENT. 484
"GOOD FAITH" MEANS HONESTY IN FACT IN THE CONDUCT OR
TRANSACTION CONCERNED AND THE OBSERVANCE OF REASONABLE 486
COMMERCIAL STANDARDS OF FAIR DEALING.

1-203. 488

(A) THIS ARTICLE APPLIES TO: 491

(1) EVERY EXPENDITURE BY A STATE AGENCY FOR 493
SUPPLIES, SERVICES, AND CONSTRUCTION UNDER ANY CONTRACT OR 494
SIMILAR BUSINESS AGREEMENT;

(2) PROCUREMENT BY A STATE AGENCY ON BEHALF OF A LOCAL GOVERNMENTAL AGENCY OR OTHER NONSTATE ENTITY; AND	496 497
(3) PROCUREMENT BY BLIND INDUSTRIES AND SERVICES OF MARYLAND, THE MARYLAND AUTOMOBILE INSURANCE FUND, THE UNIVERSITY OF MARYLAND, AND THE MARYLAND ENVIRONMENTAL TRUST, ALL OF WHICH ARE STATE AGENCIES FOR THE PURPOSES OF THIS ARTICLE.	499 500 501
(B) UNLESS OTHERWISE INDICATED, THIS ARTICLE DOES NOT APPLY TO:	503
(1) CONTRACTS OR LIKE BUSINESS AGREEMENTS BETWEEN A STATE AGENCY AND A POLITICAL SUBDIVISION OF THE STATE OR OTHER GOVERNMENTS;	505 506
(2) PROCUREMENT BY BISTATE OR MULTISTATE GOVERNMENTAL AGENCIES;	508
(3) PROCUREMENT BY BICOUNTY AND MULTICOUNTY LOCAL GOVERNMENTAL AGENCIES; AND	510
(4) PROCUREMENT BY POLITICAL SUBDIVISIONS OF THE STATE, INCLUDING COUNTIES, MUNICIPALITIES, SANITARY DISTRICTS, DRAINAGE DISTRICTS, SOIL CONSERVATION DISTRICTS, AND WATER SUPPLY DISTRICTS.	512 513 514
SUBTITLE 3. DETERMINATIONS	517
1-301.	520
EVERY DETERMINATION REQUIRED BY THIS ARTICLE SHALL BE IN WRITING AND BASED UPON WRITTEN FINDINGS OF THE PUBLIC OFFICIAL OR EMPLOYEE MAKING THE DETERMINATION AND SHALL BE RETAINED IN AN OFFICIAL CONTRACT FILE FOR A PERIOD OF 3 YEARS.	522 524 525
TITLE 2. PROCUREMENT ORGANIZATION	528
SUBTITLE 1. STATE PROCUREMENT ORGANIZATION	530
2-101.	533
IN THIS ARTICLE, THE STATE PROCUREMENT BOARD MEANS THE BOARD OF PUBLIC WORKS.	536
2-102.	539
(A) THE BOARD HAS POWER AND AUTHORITY OVER THE PROCUREMENT, MANAGEMENT, AND CONTROL OF ALL SUPPLIES, SERVICES, CONSTRUCTION, AND OTHER ITEMS PROCURED BY THE STATE. FOR THE PURPOSE OF CARRYING OUT THE PROVISIONS OF THIS ARTICLE, THE BOARD HAS AUTHORITY TO SET POLICY AND TO ADOPT REGULATIONS WHICH ARE CONSISTENT WITH THIS ARTICLE.	542 543 544 545 546

THE BOARD SHALL MONITOR ADHERENCE TO THIS ARTICLE AND THE REGULATIONS ADOPTED UNDER IT.	547
(B) THE BOARD SHALL ADOPT REGULATIONS, CONSISTENT WITH THIS ARTICLE, GOVERNING:	549
(1) PROCEDURES FOR THE REVIEW AND APPROVAL OF PROCUREMENT CONTRACTS INCLUDING MULTIYEAR CONTRACTS, CONDITIONS AND PROCEDURES FOR DELEGATING PROCUREMENT AUTHORITY INCLUDING DESIGNATION OF CONTROL AUTHORITIES, PROCEDURES FOR REVIEW OF DETERMINATIONS, AND PROCEDURES FOR CERTIFICATION OF ADEQUACY OF APPROPRIATIONS AND AVAILABILITY OF FUNDS;	551 552 553 554 555 556
(2) PREQUALIFICATION, SUSPENSION, DISQUALIFICATION, AND REINSTATEMENT OF PROSPECTIVE BIDDERS;	558 559
(3) SMALL PROCUREMENT PROCEDURES;	561
(4) CONDITIONS AND PROCEDURES FOR THE PROCUREMENT OF PERISHABLES AND ITEMS FOR RESALE;	563
(5) CONDITIONS AND PROCEDURES FOR THE PROCUREMENT OF SUPPLIES, SERVICES, OR CONSTRUCTION FINANCED BY FEDERAL CONTRACTS OR GRANTS.	565 566
(6) CONDITIONS AND PROCEDURES FOR COOPERATIVE PROCURMENT;	568
(7) CONDITIONS AND PROCEDURES FOR PROCUREMENT BY STATE AGENCIES WHICH IS FINANCED BY REVENUE BONDS;	570 571
(8) CONDITIONS, INCLUDING EMERGENCIES, AND PROCEDURES UNDER WHICH PROCUREMENT MAY BE MADE BY MEANS OTHER THAN COMPETITIVE SEALED BIDDING;	573 574
(9) REJECTION OF BIDS, CONSIDERATION OF ALTERNATE BIDS, AND WAIVER OF INFORMALITIES IN BIDS;	576 577
(10) CONFIDENTIAL, PROPRIETARY INFORMATION, AND TRADE SECRETS SUBMITTED BY ACTUAL OR PROSPECTIVE BIDDERS AND OFFERORS;	579 580
(11) PARTIAL, PROGRESSIVE, AND MULTIPLE AWARDS;	582
(12) DEFINITIONS AND CLASSES OF CONTRACTUAL SERVICES AND PROCEDURES FOR ACQUIRING THEM;	584 585
(13) REPORTS; AND	587
(14) PROCEDURES FOR ADVERTISEMENT AND PUBLIC NOTICE OF SOLICITATIONS.	589
(C) THE BOARD MAY ADOPT ANY OTHER REGULATIONS, CONSISTENT WITH THIS ARTICLE, IT MAY CONSIDER ADVISABLE TO CARRY OUT THE PURPOSES OF THIS ARTICLE.	591 592 593

2-103.	596
THE BOARD MAY ESTABLISH AND TERMINATE PROCUREMENT ADVISORY COUNCILS WHICH, IF CREATED, AND UPON ADEQUATE PUBLIC NOTICE, SHALL MEET AT LEAST ONCE A YEAR FOR THE DISCUSSION OF PROBLEMS AND RECOMMENDATIONS FOR IMPROVEMENT OF THE PROCUREMENT PROCESS. A COUNCIL MAY CONDUCT STUDIES, RESEARCH, AND ANALYSES ON SUBJECTS OR MATTERS WITHIN THE JURISDICTION OF AND AS DIRECTED BY THE BOARD.	599 600 601 602 603
SUBTITLE 2. PROCUREMENT ADMINISTRATOR	606
2-201.	609
THERE IS AN OFFICE OF STATE PROCUREMENT UNDER THE BOARD. THE OFFICE SHALL BE HEADED BY THE PROCUREMENT ADMINISTRATOR.	612 613
2-202.	616
(A) THE BOARD, WITH THE ADVICE AND CONSENT OF THE SENATE, SHALL APPOINT THE ADMINISTRATOR WHO SHALL SERVE AT THE PLEASURE OF THE BOARD.	620 621
(B) THE ADMINISTRATOR SHALL HAVE DEMONSTRATED EXECUTIVE AND ORGANIZATIONAL ABILITY, AND A THOROUGH KNOWLEDGE OF AND DIVERSIFIED EXPERIENCE IN PROCUREMENT PRACTICES AND PROCESSES.	623 624 625
2-203.	628
THE ADMINISTRATOR SHALL:	631
(1) PREPARE AND MAINTAIN A LIST OF ALL PROCUREMENT OFFICERS;	633
(2) INFORM ALL PROCUREMENT OFFICERS OF REGULATIONS PROPOSED AND ADOPTED BY THE BOARD IN A MANNER CONSISTENT WITH THE STATE DOCUMENTS LAW;	635 636
(3) RECOMMEND REGULATIONS FOR ADOPTION BY THE BOARD;	638
(4) ASSIST STATE AGENCIES IN THE DEVELOPMENT OF STANDARD SPECIFICATIONS FOR USE IN THE PROCUREMENT OF SUPPLIES, SERVICES, AND CONSTRUCTION;	640 641 642
(5) ASSIST STATE AGENCIES IN THE ADMINISTRATION OF PROGRAMS FOR THE DEVELOPMENT AND USE OF PROCUREMENT SPECIFICATIONS AND FOR THE INSPECTION, TESTING, AND ACCEPTANCE OF SUPPLIES, SERVICES, AND CONSTRUCTION;	644 645 646
(6) PREPARE ANY REPORTS THE BOARD CONSIDERS NECESSARY FOR THE PROPER CONDUCT OF HIS DUTIES;	648 649

(7) RECOMMEND COOPERATIVE PROCUREMENT POLICIES 651
TO THE BOARD;

(8) MONITOR ON BEHALF OF THE BOARD ADHERENCE TO 653
THE PROVISIONS OF THIS ARTICLE AND THE BOARD'S REGULATIONS 654
BY THE PROCUREMENT AGENCIES; AND

(9) PERFORM OTHER DUTIES AS ASSIGNED BY THE 656
BOARD.

SUBTITLE 3. COMPLIANCE WITH STATE PROCUREMENT 659 LAWS AND REGULATIONS 660

2-301. 663

(A) NO STATE AGENCY MAY ENTER INTO A CONTRACT FOR 666
SUPPLIES, SERVICES, OR CONSTRUCTION EXCEPT IN ACCORDANCE 667
WITH THE PROVISIONS OF THIS ARTICLE AND THE REGULATIONS
ESTABLISHED BY THE BOARD PURSUANT TO THIS ARTICLE. 668

(B) A CONTRACT WHICH IS ENTERED INTO IN VIOLATION OF 670
THIS ARTICLE OR THE REGULATIONS PROMULGATED UNDER IT IS 671
VOID, UNLESS IT IS DETERMINED IN A PROCEEDING UNDER THIS 672
ARTICLE OR SUBSEQUENT JUDICIAL REVIEW THAT THERE HAS BEEN 673
SUBSTANTIAL, GOOD FAITH COMPLIANCE BY ALL PARTIES WITH THE 674
PROVISIONS OF THE ARTICLE AND REGULATIONS. HOWEVER, IF A 675
CONTRACT IS VOID, A CONTRACTOR WHO HAS ENTERED INTO THE
CONTRACT IN GOOD FAITH, WITHOUT DIRECTLY CONTRIBUTING TO A
VIOLATION, AND WITHOUT KNOWLEDGE OF ANY VIOLATION OF THE 676
ARTICLE OR REGULATIONS PRIOR TO THE AWARD OF THE CONTRACT 677
MAY BE COMPENSATED FOR COSTS ACTUALLY INCURRED.

SUBTITLE 4. STATE PROCUREMENT REGULATIONS 680

2-401. 683

(A) BY JULY 1, 1980, THE BOARD SHALL FORMULATE 686
REGULATIONS TO CARRY OUT THE PROVISIONS OF THIS ARTICLE. IN 687
FORMULATING THESE REGULATIONS THE BOARD SHALL CONSULT WITH 688
THE AFFECTED AGENCIES AND GIVE THESE AGENCIES AN OPPORTUNITY
TO SUGGEST REGULATIONS. 689

(B) THE BOARD SHALL ADOPT REGULATIONS IN ACCORDANCE 691
WITH THE PROVISIONS OF THE ADMINISTRATIVE PROCEDURE ACT. 692

(C) THE BOARD MAY NOT DELEGATE ITS POWER TO 694
PROMULGATE STATE PROCUREMENT REGULATIONS. HOWEVER, PRIOR TO 695
THE ADOPTION OF REGULATIONS BY THE BOARD, ANY STATE AGENCY 696
CURRENTLY AUTHORIZED BY LAW TO ADOPT REGULATIONS MAY DO SO 697
WITH THE APPROVAL OF THE BOARD. IF NO REGULATIONS ARE
ADOPTED, A STATE AGENCY MAY OPERATE UNDER EXISTING 698
PROCUREMENT PROCEDURES UNLESS THEY ARE INCONSISTENT WITH 699
THIS ARTICLE OR DISAPPROVED BY THE BOARD.

(D) STATE PROCUREMENT REGULATIONS MAY NOT CHANGE IN 701
ANY WAY A PREEXISTING CONTRACTUAL OBLIGATION. 702

(E) A STATE PROCUREMENT REGULATION WHICH HAS BEEN 704
ADOPTED PRIOR TO THE MAKING OF A CONTRACT AND WHICH REQUIRES 705
THAT A CERTAIN CONTRACTUAL PROVISION IS MANDATORY FOR 706
INCLUSION IN ALL OR CERTAIN CONTRACTS SHALL BE CONSIDERED
INCLUDED IN SUCH CONTRACTS, WHETHER PHYSICALLY INCORPORATED 707
INTO THE CONTRACT OR NOT, IF NOTICE OF THIS PROVISION IS A 708
PART OF THE CONTRACT. ANY OTHER STATE PROCUREMENT 709
REGULATION MAY BECOME PART OF A PROCUREMENT CONTRACT ONLY IF 710
IT IS SET OUT IN THE CONTRACT OR IT IS INCORPORATED BY
REFERENCE WITH THE CONSENT OF ALL PARTIES. HOWEVER, THE 711
PARTIES TO THE CONTRACT MAY CONSENT TO INCORPORATION BY 712
REFERENCE AT ANY TIME AFTER THE CONTRACT HAS BEEN MADE 713
WITHOUT THE NECESSITY OF CONSIDERATION PASSING TO EITHER 714
PARTY.

SUBTITLE 5. COOPERATION AND COORDINATION IN 717 STATE PROCUREMENT 718

2-501. 721

THE BOARD AND THE ADMINISTRATOR SHALL MAINTAIN A CLOSE 724
AND COOPERATIVE RELATIONSHIP WITH THE PROCUREMENT AND USING 726
AGENCIES. ANY PROCUREMENT OR USING AGENCY MAY AT ANY TIME 727
MAKE RECOMMENDATIONS RELATING TO PROCUREMENT TO THE BOARD OR 728
THE ADMINISTRATOR.

2-502. 731

THE ADMINISTRATOR SHALL COOPERATE WITH THE DEPARTMENT 734
OF BUDGET AND FISCAL PLANNING, THE STATE LAW DEPARTMENT, AND 736
THE DEPARTMENT OF FISCAL SERVICES IN THE PREPARATION OF
STATISTICAL DATA ABOUT THE ACQUISITION, USE, AND DISPOSITION 738
OF ALL SUPPLIES, SERVICES, AND CONSTRUCTION. ALL 739
PROCUREMENT AND USING AGENCIES SHALL FURNISH ANY REPORTS THE 740
ADMINISTRATOR REQUIRES ABOUT USE, NEEDS, AND STOCKS ON HAND. 741

2-503. 744

AGENCIES IN THE LEGISLATIVE AND JUDICIAL BRANCHES OF 747
THE STATE GOVERNMENT ARE PERMITTED AND ENCOURAGED TO CONDUCT 748
THEIR PROCUREMENT ACTIVITIES UNDER THIS ARTICLE BUT ARE NOT 749
REQUIRED TO DO SO.

TITLE 3. SOURCE SELECTION AND CONTRACT FORMATION 752

SUBTITLE 1. DEFINITIONS 754

3-101. 757

(A) IN THIS TITLE, THE FOLLOWING WORDS HAVE THE 760
MEANINGS INDICATED:

(B) "COMPETITIVE NEGOTIATION" MEANS A PROCESS WHICH INCLUDES THE SUBMISSION OF WRITTEN TECHNICAL AND PRICE PROPOSALS FROM TWO OR MORE SOURCES AND A WRITTEN EVALUATION OF THOSE PROPOSALS IN ACCORDANCE WITH EVALUATION CRITERIA.	762 763 765
(C) "COST-REIMBURSEMENT CONTRACT" MEANS A CONTRACT UNDER WHICH THE STATE REIMBURSES THE CONTRACTOR FOR THOSE CONTRACT COSTS, WITHIN A STATED CEILING, WHICH ARE RECOGNIZED AS ALLOWABLE AND ALLOCABLE UNDER THE COST AND PRICE PRINCIPLE REGULATIONS ADOPTED PURSUANT TO TITLE 6, AND A FEE, IF ANY.	767 769 770 771 772
(D) "ESTABLISHED CATALOG PRICE" MEANS THE PRICE INCLUDED IN THE MOST CURRENT CATALOG, PRICE LIST, SCHEDULE, OR OTHER FORM THAT:	774 776
(1) IS REGULARLY MAINTAINED BY THE MANUFACTURER OR SUPPLIER OF AN ITEM;	778
(2) IS PUBLISHED OR AVAILABLE FOR INSPECTION BY CUSTOMERS; AND	780
(3) STATES PRICES AT WHICH SALES ARE CURRENTLY OR WERE LAST MADE TO THE GENERAL BUYING PUBLIC FOR THAT ITEM; OR	782 783
(4) STATES DISCOUNTED PRICES AT WHICH SALES ARE CURRENTLY OR WERE LAST MADE TO LOCAL, STATE, OR FEDERAL AGENCIES.	785 786
(E) "EVALUATED BID PRICE" MEANS THE DOLLAR AMOUNT OF A BID AFTER BID PRICE ADJUSTMENTS ARE MADE UNDER OBJECTIVE MEASURABLE CRITERIA, SET FORTH IN THE INVITATION FOR BIDS, WHICH AFFECT THE ECONOMY AND EFFECTIVENESS IN THE OPERATION OR USE OF THE PRODUCT, SUCH AS RELIABILITY, MAINTAINABILITY, USEFUL LIFE, AND RESIDUAL VALUE.	788 790 792 793 794
(F) "INVITATION FOR BIDS" MEANS ANY DOCUMENT, WHETHER ATTACHED OR INCORPORATED BY REFERENCE, USED FOR SOLICITING BIDS UNDER § 3-202.	796 797
(G) "REQUEST FOR PROPOSALS" MEANS ANY DOCUMENT, WHETHER ATTACHED OR INCORPORATED BY REFERENCE, USED FOR SOLICITING PROPOSALS UNDER §§ 3-203, 3-205, OR 3-206.	799 801
(H) "RESPONSIBLE BIDDER OR OFFEROR" MEANS A PERSON WHO HAS THE CAPABILITY IN ALL RESPECTS TO PERFORM FULLY THE CONTRACT REQUIREMENTS, AND THE INTEGRITY AND RELIABILITY WHICH WILL ASSURE GOOD FAITH PERFORMANCE.	803 804 805 806
(I) "RESPONSIVE BIDDER" MEANS A PERSON WHO HAS SUBMITTED A BID UNDER § 3-202 WHICH CONFORMS IN ALL MATERIAL RESPECTS TO THE REQUIREMENTS CONTAINED IN THE SOLICITATION.	808 810

(J) "SOURCE SELECTION" MEANS THE PROCESS OF SOLICITING A BIDDER OR OFFEROR FOR THE AWARDDING OF A CONTRACT. 812
813

SUBTITLE 2. METHODS OF SOURCE SELECTION 816

3-201. 819

(A) EXCEPT AS OTHERWISE AUTHORIZED BY LAW, ALL STATE CONTRACTS SHALL BE AWARDED BY: 821

(1) COMPETITIVE SEALED BIDDING, UNDER § 3-202; 823

(2) COMPETITIVE NEGOTIATION, UNDER § 3-203; 825

(3) REVISED BIDS AFTER COMPETITIVE SEALED BIDDING WHERE ALL BIDS ARE REJECTED, UNDER § 3-204; 827
828

(4) NONCOMPETITIVE NEGOTIATION, UNDER § 3-205; 830
OR

(5) SMALL PROCUREMENT PROCEDURE, UNDER § 3-206. 832

(B) IN SELECTING ONE OF THE METHODS AUTHORIZED BY SUBSECTION (A) FOR THE AWARDDING OF CONTRACTS, IT IS THE PUBLIC POLICY OF THIS STATE THAT COMPETITIVE SEALED BIDDING SHALL BE THE PREFERRED METHOD FOR AWARDDING CONTRACTS. 834
835
836

3-202. 838

(A) CONTRACTS OVER THE AMOUNT PROVIDED BY § 3-206 SHALL BE AWARDED BY COMPETITIVE SEALED BIDDING UNLESS THE PROCUREMENT OFFICER, WITH THE APPROVAL OF THE AGENCY HEAD OR HIS DESIGNEE, DETERMINES THAT: 840
842
843

(1) SPECIFICATIONS CANNOT BE PREPARED THAT PERMIT AN AWARD ON THE BASIS OF EITHER THE LOWEST BID PRICE OR THE LOWEST EVALUATED BID PRICE; OR 845
846

(2) THERE IS ONLY ONE AVAILABLE SOURCE; OR 848

(3) THERE IS AN UNANTICIPATED EMERGENCY WHICH LEAVES INSUFFICIENT TIME TO USE THIS METHOD; OR 850
851

(4) THERE IS SOME OTHER REASON TO USE ONE OF THE OTHER AUTHORIZED METHODS WHICH IS SO COMPELLING AS TO OVERRIDE THE GENERAL PUBLIC POLICY IN FAVOR OF COMPETITIVE SEALED BIDS. 853
854
855

(B) THE INVITATION FOR BIDS SHALL STATE WHETHER AWARD WILL BE MADE ON THE BASIS OF THE LOWEST BID PRICE OR THE LOWEST EVALUATED BID PRICE, WHICHEVER IS APPLICABLE. IF THE LATTER BASIS IS USED, THE OBJECTIVE MEASURABLE CRITERIA TO BE USED SHALL BE SET FORTH IN THE INVITATION FOR BIDS. 857
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860

(C) PUBLIC NOTICE OF THE INVITATION FOR BIDS SHALL BE GIVEN PRIOR TO THE DATE FOR THE OPENING OF BIDS. THIS NOTICE SHALL BE REASONABLE IN TERMS OF THE NATURE OF THE PROCUREMENT BUT MAY NOT BE LESS THAN 10 DAYS PRIOR TO THE DATE FOR THE OPENING OF BIDS. THE NOTICE MAY BE GIVEN BY PUBLICATION IN A NEWSPAPER OF GENERAL CIRCULATION OR THE MARYLAND REGISTER.

(D) BIDS SHALL BE OPENED PUBLICLY AT THE TIME AND PLACE DESIGNATED IN THE INVITATION FOR BIDS.

(E) THE NAME OF THE BIDDERS AND THE AMOUNT OF THE BIDS SHALL BE ANNOUNCED, RECORDED, AND POSTED.

(F) THE RECORD OF THE BID, AND THE BID DOCUMENTS, SHALL BE OPEN TO PUBLIC INSPECTION AT THE TIME OF OPENING, AND THE BID AND BID FILES SHALL THEREAFTER BE OPEN TO PUBLIC INSPECTION ONLY AS PROVIDED BY THE PUBLIC INFORMATION ACT.

(G) THE CONTRACT SHALL BE AWARDED TO THE RESPONSIVE AND RESPONSIBLE BIDDER WHOSE BID IS EITHER THE LOWEST BID PRICE OR LOWEST EVALUATED BID PRICE AFTER ALL APPROVALS REQUIRED BY REGULATION HAVE BEEN OBTAINED.

(H) AFTER BID OPENING, CORRECTION OR WITHDRAWAL OF BIDS MAY BE ALLOWED ONLY (1) IF PERMITTED BY THE REGULATIONS OF THE BOARD, AND (2) UPON WRITTEN APPROVAL BY THE STATE LAW DEPARTMENT.

3-203.

(A) IF THE PROCUREMENT OFFICER DETERMINES, IN ACCORDANCE WITH THE PROVISIONS OF SECTION 3-202 OF THIS ARTICLE, THAT COMPETITIVE SEALED BIDDING CANNOT BE USED BUT THAT THERE IS MORE THAN ONE AVAILABLE SOURCE FOR THE SUBJECT OF THE CONTRACT, THE PROCUREMENT OFFICER MAY, WITH THE APPROVAL OF THE AGENCY HEAD OR HIS DESIGNEE, AWARD A CONTRACT BY COMPETITIVE NEGOTIATION.

(B) ADEQUATE PUBLIC NOTICE OF THE INTENDED PROCUREMENT SHALL BE GIVEN AS PROVIDED IN SECTION 3-202(C).

(C) THE REQUEST FOR PROPOSALS SHALL INDICATE THE RELATIVE IMPORTANCE OF EACH EVALUATION FACTOR, INCLUDING PRICE.

(D) EVERY REQUEST FOR PROPOSAL SHALL INCLUDE A WORK STATEMENT WHICH SHALL BE USED AS A BASIS FOR THE EVALUATION OF PROPOSALS.

(E) ANY WRITTEN OR ORAL NEGOTIATIONS SHALL BE CONDUCTED WITH ALL RESPONSIBLE OFFERORS. THESE NEGOTIATIONS MAY NOT DISCLOSE ANY INFORMATION DERIVED FROM PROPOSALS SUBMITTED BY COMPETING OFFERORS. IF THE REQUEST FOR PROPOSALS SO NOTIFIES ALL OFFERORS, NEGOTIATIONS BY THE PROCUREMENT OFFICER NEED NOT BE CONDUCTED:

(1) WITH RESPECT TO PRICES THAT ARE FIXED BY LAW OR REGULATION, EXCEPT THAT CONSIDERATION SHALL BE GIVEN TO COMPETITIVE TERMS AND CONDITIONS; OR	910 911
(2) IF TIME OF DELIVERY OR PERFORMANCE WILL NOT PERMIT NEGOTIATIONS; OR	913
(3) IF IT CAN BE DEMONSTRATED CLEARLY FROM THE EXISTENCE OF ADEQUATE COMPETITION OR ACCURATE PRIOR COST EXPERIENCE WITH THE PARTICULAR SUPPLY, SERVICE, OR CONSTRUCTION ITEM, THAT ACCEPTANCE OF AN INITIAL OFFER WITHOUT NEGOTIATION WOULD RESULT IN A FAIR AND REASONABLE PRICE.	915 916 917 918
(F) AFTER ALL APPROVALS REQUIRED BY LAW OR REGULATIONS HAVE BEEN OBTAINED, THE AWARD OF THE CONTRACT SHALL BE MADE TO THE RESPONSIBLE OFFEROR WHOSE PROPOSAL IS DETERMINED TO BE THE MOST ADVANTAGEOUS TO THE STATE, CONSIDERING PRICE AND THE EVALUATION FACTORS SET FORTH IN THE REQUEST FOR PROPOSALS.	920 921 922 923 924
3-204.	926
(A) A NEGOTIATED AWARD MAY BE MADE UNDER THIS SECTION IF ALL BIDS SUBMITTED UNDER SECTION 3-202 RESULT IN BID PRICES IN EXCESS OF THE FUNDS AVAILABLE FOR THE PURCHASE OR IF THE PROCUREMENT OFFICER, WITH THE APPROVAL OF THE AGENCY HEAD OR HIS DESIGNEE, DETERMINES THAT ALL PRICES RECEIVED ARE UNREASONABLE AS TO ONE OR MORE OF THE REQUIREMENTS AND:	928 930 931 933
(1) THAT THERE ARE NO ADDITIONAL FUNDS AVAILABLE TO PERMIT AN AWARD TO THE LOWEST RESPONSIVE AND RESPONSIBLE BIDDER; OR	935 936
(2) THAT ANY DELAY RESULTING FROM A RESOLICITATION UNDER REVISED SPECIFICATIONS OR QUANTITIES UNDER COMPETITIVE SEALED BIDDING AS PROVIDED IN SECTION 3-202, WOULD BE FISCALLY DISADVANTAGEOUS OR WOULD OTHERWISE NOT BE IN THE BEST INTEREST OF THIS STATE.	938 939 940 941 942
(B) IF THERE IS MORE THAN ONE BIDDER, NEGOTIATIONS SHALL BE CONDUCTED WITH ALL RESPONSIVE AND RESPONSIBLE BIDDERS. THESE NEGOTIATIONS SHALL BE CONDUCTED UNDER THE FOLLOWING RESTRICTIONS:	945 946 947
(1) IF NEGOTIATIONS ABOUT CHANGING THE SPECIFICATIONS OR QUANTITIES ARE HELD WITH ANY BIDDER, ALL OTHER BIDDERS SHALL BE ALLOWED TO TAKE PART IN THE NEGOTIATION;	949 950 951
(2) AN INVITATION FOR REVISED BIDS BASED ON REVISED SPECIFICATIONS OR QUANTITIES SHALL BE ISSUED AS PROMPTLY AS POSSIBLE, SHALL PROVIDE FOR A PROMPT RESPONSE TO THE REVISED REQUIREMENTS, AND AN AWARD SHALL BE MADE UPON THE BASIS OF THE LOWEST BID PRICE OR LOWEST EVALUATED BID	953 954 955 956

PRICE SUBMITTED BY ANY RESPONSIVE AND RESPONSIBLE BIDDER. 957
 NEGOTIATIONS MAY NOT BE CONDUCTED WITH BIDDERS AFTER REVISED 958
 BIDS HAVE BEEN SUBMITTED UNLESS THE PROCUREMENT OFFICER 959
 DETERMINES THAT THERE IS A COMPELLING REASON. THE
 INVITATION FOR REVISED BIDS SHALL STATE THAT AWARD IS TO BE 960
 MADE WITHOUT NEGOTIATIONS IF THIS IS THE CASE. 961

(C) IF, AFTER COMPETITIVE SEALED BIDDING, IT IS 963
 DETERMINED THAT THERE IS ONLY ONE RESPONSIVE AND 964
 RESPONSIBLE BIDDER, A NONCOMPETITIVE NEGOTIATED AWARD MAY BE 965
 MADE WITH THAT BIDDER UNDER SECTION 3-205.

3-205. 967

(A) IF IT IS DETERMINED IN ACCORDANCE WITH THE 969
 PROVISIONS OF SECTION 3-202 OF THIS ARTICLE THAT COMPETITIVE 970
 SEALED BIDDING CANNOT BE USED IN AWARDING A CONTRACT BECAUSE 971
 THERE IS ONLY ONE AVAILABLE SOURCE FOR THE SUBJECT OF THE 972
 CONTRACT, THE PROCUREMENT OFFICER MAY, WITH THE APPROVAL OF
 THE AGENCY HEAD OR HIS DESIGNEE, AWARD A STATE PROCUREMENT 973
 CONTRACT BY NONCOMPETITIVE NEGOTIATION.

(B) IF IT IS DETERMINED IN ACCORDANCE WITH THE 976
 PROVISIONS OF SECTION 3-202 OF THIS ARTICLE THAT COMPETITIVE 977
 SEALED BIDDING CANNOT BE USED IN AWARDING A CONTRACT BECAUSE 978
 AN UNANTICIPATED EMERGENCY LEAVES INSUFFICIENT TIME TO USE 979
 THIS METHOD, THE PROCUREMENT OFFICER MAY, WITH THE APPROVAL
 OF THE AGENCY HEAD OR HIS DESIGNEE, AWARD A STATE 980
 PROCUREMENT CONTRACT BY NONCOMPETITIVE NEGOTIATION. THE 981
 USING AGENCY SHALL SUBSEQUENTLY SUBMIT TO THE BOARD A REPORT 982
 IN WRITING JUSTIFYING THE NEED FOR THIS EMERGENCY
 PROCUREMENT.

(C) EXCEPT AS PROVIDED IN THIS SUBTITLE, A STATE 984
 PROCUREMENT CONTRACT MAY NOT BE AWARDED BY NONCOMPETITIVE 985
 NEGOTIATION.

3-206. 987

PROCUREMENTS OF NOT MORE THAN \$5,000 MAY BE MADE UNDER 989
 SMALL PROCUREMENT PROCEDURES ADOPTED BY THE BOARD. THE 990
 PROCEDURES ESTABLISHED BY THE BOARD SHALL BE INFORMAL 991
 PROCEDURES WHICH ARE CONSISTENT WITH THE BASIC INTENT OF 992
 THIS ARTICLE AND WHICH ARE NOT ECONOMICALLY DISADVANTAGEOUS
 TO THIS STATE. PROCUREMENTS MAY NOT BE ARTIFICIALLY DIVIDED 993
 SO AS TO CONSTITUTE A SMALL PROCUREMENT UNDER THIS SECTION. 995
 AT LEAST EVERY 3 YEARS, THE BOARD SHALL REVIEW THE
 PREVAILING COSTS OF LABOR AND MATERIALS AND RECOMMEND TO THE 996
 LEGISLATURE BASED ON APPROPRIATE CHANGES IN PREVAILING COSTS 997
 OF LABOR AND MATERIALS APPROPRIATE ADJUSTMENTS IN THE 998
 CEILING OF SMALL PROCUREMENTS.

SUBTITLE 3. CANCELLATION AND REJECTION OF INVITATIONS 1001
 FOR BIDS OR REQUESTS FOR PROPOSALS 1002

3-301.

1005

IF THE PROCUREMENT OFFICER, WITH THE APPROVAL OF THE AGENCY HEAD OR HIS DESIGNEE, DETERMINES THAT IT IS FISCALLY ADVANTAGEOUS OR IS OTHERWISE IN THE BEST INTEREST OF THE STATE, AN INVITATION FOR BIDS, A REQUEST FOR PROPOSALS, OR OTHER SOLICITATION MAY BE CANCELLED, OR ALL BIDS OR PROPOSALS MAY BE REJECTED.

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SUBTITLE 4. QUALIFICATIONS AND DUTIES

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3-401.

1016

(A) PRIOR TO AN AWARD, THE PROCUREMENT OFFICER SHALL DETERMINE THAT A BIDDER OR OFFEROR IS RESPONSIBLE AND RESPONSIVE. THE UNREASONABLE FAILURE OF A BIDDER OR OFFEROR TO SUPPLY INFORMATION PROMPTLY IN CONNECTION WITH A DETERMINATION UNDER THIS SUBSECTION IS GROUNDS FOR A DETERMINATION THAT THE BIDDER OR OFFEROR IS NOT RESPONSIBLE OR RESPONSIVE.

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(B) CONFIDENTIAL, PROPRIETARY INFORMATION, AND TRADE SECRETS FURNISHED BY A BIDDER UNDER THIS SECTION MAY BE DISCLOSED TO ANOTHER AGENCY ONLY IF THERE IS A DEMONSTRATED NEED FOR THE INFORMATION AND MAY NOT BE DISCLOSED OUTSIDE OF STATE GOVERNMENT EXCEPT AS PROVIDED BY THE PUBLIC INFORMATION ACT OR OTHER APPROPRIATE LAWS OF THIS STATE.

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3-402.

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(A) THE REGULATIONS SHALL PROVIDE FOR PREQUALIFICATION OF PERSONS AS PROSPECTIVE RESPONSIBLE BIDDERS AND OFFERORS FOR PARTICULAR TYPES OF SUPPLIES, SERVICES, AND CONSTRUCTION. SOLICITATION REGISTERS OF POTENTIAL CONTRACTORS OF SUPPLIES, SERVICES, AND CONSTRUCTION SHALL INCLUDE BUT NOT BE LIMITED TO ALL PREQUALIFIED PERSONS. PREQUALIFICATION DOES NOT PREVENT A DETERMINATION:

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(1) BETWEEN THE TIME OF THE BID OPENING OR RECEIPT OF OFFERS AND THE MAKING OF AN AWARD, THAT A PREQUALIFIED PERSON IS NOT RESPONSIBLE; OR

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(2) THAT A PERSON WHO IS NOT PREQUALIFIED AT THE TIME OF BID OPENING OR RECEIPT OF OFFERS IS RESPONSIBLE.

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(B) THE FACT THAT A PERSON IS NOT PREQUALIFIED SHALL NOT BAR HIM FROM SUBMITTING A BID OR OFFER.

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3-403.

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(A) EACH CONTRACTOR SHALL SUBMIT COST OR PRICE INFORMATION AND SHALL CERTIFY THAT, TO THE BEST OF HIS KNOWLEDGE, THE INFORMATION SUBMITTED IS ACCURATE, COMPLETE, AND CURRENT AS OF A MUTUALLY DETERMINED SPECIFIED DATE PRIOR TO THE DATE THE PRICE OF ANY:

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(1) NEGOTIATED CONTRACT IS DETERMINED, IF THE TOTAL CONTRACT PRICE IS EXPECTED TO EXCEED \$100,000, OR A SMALLER AMOUNT SET BY THE PROCUREMENT OFFICER; OR 1056
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(2) CHANGE ORDER OR CONTRACT MODIFICATION IS DETERMINED WHICH IS EXPECTED TO EXCEED \$100,000, OR A SMALLER AMOUNT SET BY THE PROCUREMENT OFFICER. 1059
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(B) EVERY CONTRACT, CHANGE ORDER, OR MODIFICATION UNDER WHICH A COST AND PRICE CERTIFICATE IS REQUIRED SHALL CONTAIN A PROVISION THAT THE PRICE, INCLUDING PROFIT OR FEE, SHALL BE ADJUSTED TO EXCLUDE ANY SIGNIFICANT PRICE INCREASES OCCURRING BECAUSE THE CONTRACTOR FURNISHED COST OR PRICE INFORMATION WHICH, AS OF THE DATE AGREED UPON BETWEEN THE PARTIES, WAS INACCURATE, INCOMPLETE, OR NOT CURRENT. 1062
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(C) THIS SECTION NEED NOT BE APPLIED TO CONTRACTS FOR WHICH THE PRICE NEGOTIATED IS BASED ON ADEQUATE PRICE COMPETITION, ESTABLISHED CATALOG OR MARKET PRICES OF COMMERCIAL ITEMS SOLD IN SUBSTANTIAL QUANTITIES TO THE GENERAL PUBLIC, OR PRICES SET BY LAW OR REGULATION. 1069
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3-404. 1074

BID AND PERFORMANCE BONDS OR OTHER SECURITY MAY BE REQUIRED FOR ANY PROCUREMENT OF SUPPLIES AND SERVICES OVER \$25,000 IF THE CIRCUMSTANCES WARRANT, AS DETERMINED BY THE PROCUREMENT OFFICER. 1076
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SUBTITLE 5. MANAGEMENT OF CONSTRUCTION CONTRACTING 1081

3-501. 1084

THE BOARD SHALL PROMULGATE REGULATIONS PROVIDING FOR ALTERNATIVE METHODS OF MANAGEMENT OF CONSTRUCTION CONTRACTING, SETTING STANDARDS FOR DETERMINING THE METHOD OF MANAGEMENT TO BE USED FOR A PARTICULAR PROJECT, AND GRANTING THE PROCUREMENT AGENCY OR RESERVING TO THE BOARD THE DISCRETION TO SELECT THE APPROPRIATE METHOD OF CONSTRUCTION CONTRACTING FOR A PARTICULAR PROJECT. HOWEVER, THE PROCUREMENT OFFICER SHALL INCLUDE IN THE CONTRACT FILE A DETERMINATION OF THE FACTS THAT LEAD TO THE SELECTION OF A PARTICULAR METHOD. 1086
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3-502. 1094

(A) EACH BIDDER OR OFFEROR SHALL GIVE A BID BOND IF THE CONTRACT PRICE IS ESTIMATED BY THE PROCUREMENT OFFICER TO EXCEED \$25,000. THE BID BOND SHALL BE PROVIDED BY A SURETY COMPANY AUTHORIZED TO DO BUSINESS IN THIS STATE, OR THE EQUIVALENT IN CASH, OR IN A FORM SATISFACTORY TO THE PROCUREMENT OFFICER. THIS SUBSECTION DOES NOT PREVENT REQUIREMENT OF A BID BOND ON CONSTRUCTION CONTRACTS UNDER \$25,000 IF THE CIRCUMSTANCES WARRANT AS DETERMINED BY THE PROCUREMENT OFFICER. 1096
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(B) THE BID BOND SHALL BE IN AN AMOUNT EQUAL TO AT LEAST 5 PERCENT OF THE AMOUNT OF THE BID OR PRICE PROPOSAL. 1104
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(C) IF THE INVITATION FOR BIDS OR REQUEST FOR PROPOSALS REQUIRE THAT A BID BOND BE PROVIDED, A BIDDER OR OFFEROR THAT DOES NOT COMPLY SHALL BE REJECTED. 1107
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(D) ONCE OPENED, BIDS OR PRICE PROPOSALS ARE IRREVOCABLE FOR THE PERIOD SPECIFIED IN THE INVITATION FOR BIDS OR THE REQUEST FOR PROPOSAL. HOWEVER, IF A BIDDER OR OFFEROR IS PERMITTED TO WITHDRAW HIS BID OR PROPOSAL BEFORE AWARD BECAUSE OF A MISTAKE IN THE BID OR PROPOSAL, NO ACTION SHALL BE TAKEN AGAINST HIS BID BOND. 1111
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3-503. 1117

(A) THE BOARD SHALL SPECIFY CLAUSES, TO BE INCLUDED IN ALL CONSTRUCTION CONTRACTS CONCERNING: 1119
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(1) TERMINATION FOR THE CONVENIENCE OF THE STATE OR FOR DEFAULT; 1122

(2) LIQUIDATED DAMAGES IF APPROPRIATE, AS SPECIFIED IN THE CONTRACT SCHEDULE; 1124

(3) EXCUSES FOR NONPERFORMANCE; AND 1126

(4) ADJUSTMENTS TO CONTRACT TERMS AND CONDITIONS IF: 1128

(I) A CHANGE ORDER IS ISSUED BY THE PROCUREMENT OFFICER; 1130

(II) A SITE CONDITION IS DIFFERENT FROM THAT INDICATED IN THE SPECIFICATIONS; 1132

(III) THE QUANTITIES VARY FROM THE ESTIMATED QUANTITIES IN A CONTRACT PROVIDING FOR ESTIMATED QUANTITIES; OR 1134
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(IV) WORK IS SUSPENDED. 1137

(B) EVERY CONTRACT MODIFICATION, CHANGE ORDER, OR ADJUSTMENT IN CONTRACT PRICE IS SUBJECT TO PRIOR WRITTEN APPROVAL BY THE RESPONSIBLE MANAGER IN THE USING AGENCY AND CERTIFICATION BY THE APPROPRIATE FISCAL AUTHORITY, UNDER REGULATIONS ADOPTED BY THE BOARD, AS TO THE AVAILABILITY OF FUNDS AND TO THE EFFECT OF THE MODIFICATION, CHANGE, OR ADJUSTMENT ON THE PROJECT BUDGET OR THE TOTAL CONSTRUCTION COST. IF THE CERTIFICATION DISCLOSES A RESULTING INCREASE IN THE PROJECT BUDGET OR TOTAL CONSTRUCTION COST, THE PROCUREMENT OFFICER MAY NOT EXECUTE OR MAKE THE MODIFICATION, CHANGE, OR ADJUSTMENT UNLESS SUFFICIENT FUNDS ARE AVAILABLE, OR THE SCOPE OF THE PROJECT IS ADJUSTED TO PERMIT ITS COMPLETION WITHIN THE PROJECT BUDGET. 1139
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SUBTITLE 6. TYPES OF CONTRACTS	1152
3-601.	1155
THE COST-PLUS-A-PERCENTAGE-OF-COST SYSTEM OF CONTRACTING MAY NOT BE USED FOR PRIME OR SUBCONTRACTS.	1157 1158
3-602.	1160
(A) COST-REIMBURSEMENT CONTRACTS MAY NOT BE MADE TO PRIME CONTRACTORS UNDER SECTIONS 3-203, 3-204, OR 3-205 UNLESS THE PROCUREMENT OFFICER DETERMINES THAT THE CONTRACT IS LIKELY TO BE LESS COSTLY TO THE STATE THAN ANY OTHER TYPE OF CONTRACT, OR THAT IT IS IMPRACTICABLE TO OBTAIN SUPPLIES, SERVICES, OR CONSTRUCTION OF THE KIND OR QUALITY REQUIRED EXCEPT UNDER SUCH A CONTRACT.	1163 1164 1165 1166 1167
(B) EACH CONTRACTOR UNDER A COST-REIMBURSEMENT TYPE CONTRACT SHALL GIVE NOTICE AND SECURE APPROVAL, AS REQUIRED BY THE CONTRACT, BEFORE ENTERING INTO:	1169 1170
(1) A COST-REIMBURSEMENT SUBCONTRACT; OR	1172
(2) ANY OTHER SUBCONTRACT INVOLVING MORE THAN \$25,000, OR 5 PERCENT OF THE ESTIMATED COST OF THE PRIME CONTRACT.	1174 1175
(C) COST-REIMBURSEMENT CONTRACTS SHALL PROVIDE THAT COSTS WILL BE REIMBURSED ONLY IF THEY ARE COSTS RECOGNIZED AS ALLOWABLE AND ALLOCABLE UNDER THE COST AND PRICE PRINCIPLE REGULATIONS ADOPTED PURSUANT TO TITLE 6, OR IN THE CONTRACT.	1177 1178 1179 1180
3-603.	1182
SUBJECT TO THE LIMITATIONS OF SECTIONS 3-601 AND 3-602, ANY TYPE OF CONTRACT WHICH WILL PROMOTE THE BEST INTERESTS OF THE STATE MAY BE USED. HOWEVER, PREFERENCE SHALL BE GIVEN IN THE ORDER INDICATED TO THE FOLLOWING TYPES OF CONTRACTS: FIRST, FIXED-PRICE; SECOND, FIXED-PRICE INCENTIVE; THIRD, COST-PLUS INCENTIVE FEE; AND FOURTH, COST-PLUS FIXED FEE OR COST-REIMBURSEMENT.	1184 1185 1186 1187 1188
3-604.	1190
EXCEPT FOR A FIRM FIXED-PRICE CONTRACT, NO CONTRACT TYPE MAY BE USED UNLESS THE PROCUREMENT OFFICER DETERMINES THAT THE CONTRACTOR'S ACCOUNTING SYSTEM WILL PERMIT TIMELY DEVELOPMENT OF ALL NECESSARY COST DATA IN THE FORM REQUIRED BY THE SPECIFIC TYPE OF CONTRACT CONTEMPLATED AND THAT THE CONTRACTOR'S ACCOUNTING SYSTEM IS ADEQUATE TO ALLOCATE COSTS IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.	1192 1193 1194 1195 1196 1197
3-605.	1199

(A) THE BOARD SHALL, BY REGULATION, PROVIDE FOR THE REVIEW AND APPROVAL OF CONTRACTS FOR SUPPLIES, SERVICES, OR CONSTRUCTION WHICH EXTEND BEYOND THE CURRENT FISCAL YEAR. AT EACH LEVEL OF THE REVIEW AND APPROVAL PROCEDURE OF MULTIYEAR CONTRACTS, IT SHALL BE DETERMINED:

(1) THAT ESTIMATED REQUIREMENTS COVER THE PERIOD OF THE CONTRACT AND ARE REASONABLY FIRM AND CONTINUING; AND

(2) THAT THE CONTRACT WILL SERVE THE BEST INTERESTS OF THE STATE BY ENCOURAGING EFFECTIVE COMPETITION OR OTHERWISE PROMOTING ECONOMIES IN STATE PROCUREMENT.

(B) PAYMENT AND PERFORMANCE OF CONTRACTUAL OBLIGATIONS ENTERED PURSUANT TO SUBSECTION (A) OF THIS SECTION FOR A FISCAL YEAR OTHER THAN THE FISCAL YEAR IN WHICH THE CONTRACT WAS APPROVED ARE SUBJECT TO THE APPROPRIATION OF FUNDS FOR THE PAYMENT AND PERFORMANCE OF THESE OBLIGATIONS.

(C) IF FUNDS ARE NOT APPROPRIATED FOR THE CONTINUED PERFORMANCE FOR A CONTRACT APPROVED UNDER SUBSECTION (A) OF THIS SECTION, THE CONTRACT FOR THAT YEAR IS TERMINATED EITHER AUTOMATICALLY OR IN ACCORDANCE WITH THE TERMINATION CLAUSE OF THE CONTRACT, IF ANY. UNLESS OTHERWISE PROVIDED FOR IN THE CONTRACT, THE EFFECT OF TERMINATION IS TO DISCHARGE BOTH PARTIES FROM FURTHER PERFORMANCE OF THE CONTRACT, BUT NOT FROM THEIR EXISTING OBLIGATIONS.

(D) ALL CONTRACTS ENTERED INTO UNDER THIS ARTICLE SHALL CONTAIN A NOTICE THAT THEY ARE SUBJECT TO TERMINATION, EITHER AUTOMATICALLY OR IN ACCORDANCE WITH A TERMINATION CLAUSE, IF ANY, UPON THE FAILURE OF THE GENERAL ASSEMBLY TO APPROPRIATE FUNDS FOR THE FURTHER PERFORMANCE OF THE CONTRACT.

SUBTITLE 7. INSPECTION OF PLANT AND AUDIT OF RECORDS

3-701.

(A) A STATE AGENCY OR THE DEPARTMENT OF FISCAL SERVICES MAY INSPECT AT REASONABLE TIMES THE PLANT, PLACE OF BUSINESS, OR JOB SITE OF ANY CONTRACTOR OR ANY SUBCONTRACTOR UNDER ANY CONTRACT AWARDED OR TO BE AWARDED BY THE STATE.

(B) (1) A STATE AGENCY OR THE DEPARTMENT OF FISCAL SERVICES MAY AUDIT THE BOOKS, ACCOUNTS, AND RECORDS OF ANY PERSON WHO SUBMITS COST OR PRICE INFORMATION UNDER § 3-403, AT ANY TIME BEFORE THE PERIOD OF RECORD RETENTION SET FORTH IN SUBSECTION (3) HAS EXPIRED. THIS RIGHT TO AUDIT EXTENDS ONLY TO THOSE BOOKS, ACCOUNTS, AND RECORDS REASONABLY CONNECTED WITH COST OR PRICE INFORMATION SUBMITTED UNDER § 3-403. THE CONTRACTOR OR SUBCONTRACTOR SHALL MAINTAIN THESE BOOKS, ACCOUNTS, AND RECORDS FOR THE PERIOD SPECIFIED IN SUBSECTION (2).

(2) A STATE AGENCY OR THE DEPARTMENT OF FISCAL SERVICES MAY AUDIT THE BOOKS, ACCOUNTS, AND RECORDS OF A CONTRACTOR OR ANY SUBCONTRACTOR UNDER ANY NEGOTIATED CONTRACT OR SUBCONTRACT EXCEPT A FIRM FIXED-PRICE TYPE CONTRACT. HOWEVER, THIS SUBSECTION DOES NOT LIMIT THE RIGHT TO AUDIT AS SET FORTH IN SUBSECTION (1) ABOVE.

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(3) THE BOOKS, ACCOUNTS, AND RECORDS SHALL BE MAINTAINED BY A CONTRACTOR FOR A PERIOD OF 3 YEARS FROM THE DATE OF FINAL PAYMENT UNDER THE CONTRACT, AND BY THE SUBCONTRACTOR FOR A PERIOD OF 3 YEARS FROM THE DATE OF FINAL PAYMENT UNDER THE SUBCONTRACT, OR AS REQUIRED BY THE CONTRACT.

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SUBTITLE 8. DETERMINATIONS AND REPORTS

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3-801.

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(A) A PERSON WHO ENTERS INTO A CONTRACT WITH THE STATE AFTER ENGAGING IN COLLUSION WITH ANOTHER PERSON FOR THE PURPOSE OF DEFRAUDING THE STATE IS LIABLE IN A SUIT BROUGHT BY THE ATTORNEY GENERAL IN THE APPROPRIATE COURT FOR DAMAGES EQUAL TO THREE TIMES THE VALUE OF THE LOSS TO THE STATE WHICH IS ATTRIBUTABLE TO THE COLLUSION.

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(B) IF THERE IS A REASONABLE BASIS FOR BELIEVING THAT COLLUSION HAS OCCURRED AMONG ANY PERSONS FOR ANY REASON, THE PROCUREMENT OFFICER SHALL SEND A WRITTEN NOTICE OF THIS BELIEF TO THE STATE LAW DEPARTMENT.

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(C) ALL DOCUMENTS INVOLVED IN ANY PROCUREMENT IN WHICH THERE IS A REASONABLE BASIS FOR BELIEVING THAT COLLUSION HAS OCCURRED SHALL BE RETAINED BY THE PROCUREMENT AGENCY UNTIL THE STATE LAW DEPARTMENT GIVES NOTICE THAT THEY MAY BE DESTROYED. THESE DOCUMENTS SHALL BE MADE AVAILABLE TO THE ATTORNEY GENERAL IMMEDIATELY ON REQUEST.

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3-802.

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(A) WITHIN 90 DAYS FOLLOWING THE CLOSE OF THE FISCAL YEAR, THE BOARD SHALL MAKE AN ANNUAL REPORT TO THE GOVERNOR AND THE GENERAL ASSEMBLY OF CONTRACTS MADE UNDER § 3-205 DURING THAT PRECEDING FISCAL YEAR. THE REPORT SHALL:

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(1) NAME EACH CONTRACTOR;

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(2) STATE THE AMOUNT AND TYPE OF EACH CONTRACT;

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(3) DESCRIBE THE SUPPLIES, SERVICES, AND CONSTRUCTION PROCURED; AND

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(4) INCLUDE COPIES OF ALL DETERMINATIONS AND FINDINGS REQUIRED TO BE MADE UNDER THIS ARTICLE AND THE REGULATIONS.

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(B) WITHIN 90 DAYS FOLLOWING THE CLOSE OF THE FISCAL YEAR, THE BOARD SHALL MAKE AN ANNUAL REPORT TO THE GOVERNOR AND THE GENERAL ASSEMBLY OF CONTRACTS FOR PERSONAL SERVICES WHICH EXCEED \$100,000 DURING THE PRECEDING FISCAL YEAR. THE REPORT SHALL:

- (1) NAME EACH CONTRACTOR;
- (2) STATE THE AMOUNT AND TYPE OF EACH CONTRACT;
- (3) DESCRIBE THE PERSONAL SERVICES PROCURED;
- (4) INDICATE THE NUMBER OF PERSONS EMPLOYED BY THE CONTRACTOR AND THE RATES OF REMUNERATION BY JOB CATEGORY.

(C) THE ANNUAL REPORTS SHALL BE RETAINED FOR AT LEAST A PERIOD OF 3 YEARS AND SHALL BE MADE AVAILABLE TO THE PUBLIC UPON REQUEST.

TITLE 4. SPECIFICATIONS

4-101.

THE BOARD SHALL MAINTAIN ALL STANDARD SPECIFICATIONS DEVELOPED FOR SUPPLIES, SERVICES, AND CONSTRUCTION REQUIRED BY THE STATE AND TO THE GREATEST EXTENT PRACTICABLE, IT SHALL:

- (1) ASSIST IN THE PREPARATION OF STANDARD SPECIFICATIONS FOR SUPPLIES, SERVICES, AND CONSTRUCTION COMMONLY REQUIRED BY THE STATE;
- (2) ASSIST IN THE REVISION OF STANDARD SPECIFICATIONS TO CONFORM TO TECHNICAL AND SCIENTIFIC ADVANCES AND TO REFLECT CHANGES IN THE STATE'S REQUIREMENTS;
- (3) ESTABLISH GUIDELINES FOR DRAFTING SPECIFICATIONS; AND
- (4) DISSEMINATE STANDARD SPECIFICATIONS TO APPROPRIATE USING AGENCIES, AS NECESSARY.

4-102.

ALL SPECIFICATIONS SHALL BE DRAFTED SO AS TO ASSURE THE MAXIMUM PRACTICABLE COMPETITION TO FULFILL THE STATE'S REQUIREMENTS. SPECIFICATIONS MAY NOT BE DRAWN IN SUCH A MANNER AS TO FAVOR A SINGLE PROSPECTIVE BIDDER OR OFFEROR OVER OTHER PROSPECTIVE BIDDERS OR OFFERORS.

TITLE 5. MODIFICATION AND TERMINATION OF CONTRACTS FOR SUPPLIES AND SERVICES

5-101.

THE BOARD SHALL PROMULGATE REGULATIONS:	1354
(1) PERMITTING OR REQUIRING THE INSERTION IN CONTRACTS FOR THE PROCUREMENT OF SUPPLIES OR SERVICES, OF APPROPRIATE CLAUSES TO ENABLE THE STATE TO MAKE DESIRED CHANGES AND MODIFICATIONS TO THESE CONTRACTS;	1356 1358 1360
(2) ON THE TERMINATION OF CONTRACTS FOR THE DEFAULT OF THE CONTRACTOR; AND	1362
(3) ON THE TERMINATION OF CONTRACTS FOR THE CONVENIENCE OF THE STATE.	1364
TITLE 6. COST AND PRICING PRINCIPLES	1367
6-101.	1370
THE BOARD SHALL PROMULGATE REGULATIONS DIRECTED TOWARDS DETERMINING THE REASONABLENESS OF PRICE AND ESTABLISHING COST PRINCIPLES, BASED UPON GENERALLY ACCEPTED ACCOUNTING PRINCIPLES, WHICH SHALL BE USED:	1373 1374 1375
(1) AS GUIDELINES IN NEGOTIATING:	1377
(I) ESTIMATED COSTS OR FIXED PRICES IF THE ABSENCE OF OPEN MARKET COMPETITION PRECLUDES THE USE OF COMPETITIVE SEALED BIDDING;	1379 1380
(II) ADJUSTMENTS FOR STATE DIRECTED CHANGES OR MODIFICATIONS IN CONTRACT PERFORMANCE; AND	1382 1383
(III) SETTLEMENTS OF TERMINATED CONTRACTS.	1385
(2) TO DETERMINE THE ALLOWABILITY OF COSTS UNDER CONTRACT PROVISIONS WHICH PROVIDE FOR THE REIMBURSEMENT OF COSTS; AND	1388 1389
(3) IN ANY OTHER SITUATION IF THAT REQUIRES THE DETERMINATION OF THE ESTIMATED OR THE INCURRED COSTS OR PRICES OF PERFORMING CONTRACTS.	1391 1392
TITLE 7. INTERGOVERNMENTAL RELATIONS	1395
7-101.	1398
(A) THE BOARD SHALL, BY REGULATION, PROVIDE FOR COOPERATIVE PROCUREMENT BETWEEN AND AMONG:	1400 1401
(1) AGENCIES OF THE STATE;	1403
(2) AGENCIES OF THE STATE AND OTHER PUBLIC AGENCIES; AND	1405
(3) AGENCIES OF THE STATE AND PRIVATE ENTITIES.	1407

(B) THE REGULATIONS AND PROCUREMENT PRACTICES UNDER THIS SECTION SHALL BE CONSISTENT WITH THE PROVISIONS OF THIS ARTICLE. 1409
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7-102. 1412

(A) THE BOARD SHALL, BY REGULATION, PROVIDE FOR THE TERMS, CONDITIONS, AND PROCEDURES BY WHICH STATE AGENCIES MAY APPLY FOR AND RECEIVE, ACCEPT, OR CONTINUE A FEDERAL CONTRACT, GRANT, OR AID REIMBURSEMENT. 1414
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(B) WHENEVER THE TERMS OF AN APPLICATION FOR OR RECEIPT, ACCEPTANCE OR CONTINUATION OF A FEDERAL CONTRACT, GRANT OR AID REIMBURSEMENT REQUIREMENT CONFLICT WITH THE PROVISIONS OF THIS ARTICLE OR THE REGULATIONS MADE UNDER IT, THOSE TERMS SHALL NOT BE GIVEN EFFECT UNTIL APPROVED BY THE BOARD. 1418
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7-103. 1423

(A) THE BOARD SHALL, BY REGULATION, PROVIDE FOR THE TERMS, CONDITIONS, AND PROCEDURES BY WHICH STATE AGENCIES MAY UNDERTAKE PROCUREMENT WHICH IS FINANCED BY REVENUE BONDS. 1425
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(B) WHENEVER THE TERMS OF A PROPOSED BOND TRUST AGREEMENT CONFLICT WITH THE PROVISIONS OF THIS ARTICLE OR THE REGULATIONS UNDER IT, THESE TERMS SHALL NOT BE GIVEN EFFECT. CONTRACTS FINANCED BY REVENUE BONDS SHALL NOT REQUIRE SPECIFIC APPROVAL BY THE BOARD. 1429
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TITLE 8. ADMINISTRATIVE AND CIVIL REMEDIES 1435

SUBTITLE 2. SETTLEMENT OF CONTROVERSIES OVER CONTRACTS 1437 1438

8-201. 1441

(A) UPON TIMELY DEMAND, AS DEFINED IN REGULATIONS PROMULGATED BY THE STATE PROCUREMENT BOARD, BY A PROSPECTIVE BIDDER OR OFFEROR, BIDDER OR OFFEROR, OR CONTRACTOR, THE RESPONSIBLE PROCUREMENT OFFICER OF THE USING AGENCY MAY, CONSISTENT WITH THE BUDGET AND ALL APPLICABLE LAWS AND REGULATIONS, NEGOTIATE AND SETTLE DISPUTES RELATING TO THE FORMATION OF A CONTRACT WITH THE STATE OR A CONTRACT WHICH HAS BEEN ENTERED INTO BY THE STATE. DISPUTES RELATING TO THE FORMATION OF A CONTRACT INCLUDE BUT ARE NOT LIMITED TO THOSE CONCERNING THE QUALIFICATION OF BIDDERS OR OFFERORS AND THE DETERMINATION OF THE SUCCESSFUL BIDDER OR OFFEROR. DISPUTES RELATING TO A CONTRACT WHICH HAS BEEN ENTERED INTO BY THE STATE INCLUDE BUT ARE NOT LIMITED TO THOSE CONCERNING THE PERFORMANCE, BREACH, MODIFICATION, AND TERMINATION OF THE CONTRACT. 1444
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(B) THE SETTLEMENT OF THESE DISPUTES SHALL BE IN ACCORDANCE WITH REGULATIONS ESTABLISHED BY THE STATE PROCUREMENT BOARD, AND THE PROCUREMENT OFFICER'S DECISION SHALL BE IN WRITING. EXCEPT IN THE ADOPTION OF REGULATIONS AND EXCEPT AS PROVIDED IN SUBSECTION (F) OF THIS SECTION, THE ADMINISTRATIVE PROCEDURE ACT SHALL NOT APPLY TO PROCEEDINGS UNDER THIS SECTION.

(C) THE MARYLAND STATE BOARD OF CONTRACT APPEALS SHALL PROMULGATE, IN ACCORDANCE WITH THE PROVISIONS OF THE ADMINISTRATIVE PROCEDURE ACT, INTERIM REGULATIONS PROVIDING FOR THE NEGOTIATION AND SETTLEMENT OF DISPUTES RELATING TO CONTRACTS ENTERED INTO BY THE STATE. THE REGULATIONS SHALL REMAIN IN EFFECT UNTIL REGULATIONS ARE PROMULGATED PURSUANT TO SECTION 2-401 OF THIS ARTICLE.

(D) THE DECISION OF THE PROCUREMENT OFFICER TO SETTLE OR NOT TO SETTLE A DISPUTE SHALL BE REVIEWED BY THE AGENCY HEAD. IF THE AGENCY IS PART OF ONE OF THE PRINCIPAL DEPARTMENTS OR AN EQUIVALENT UNIT OF GOVERNMENT, THE DECISION SHALL BE REVIEWED BY THE SECRETARY OR HIS EQUIVALENT. THE REVIEWING AUTHORITY MAY APPROVE OR DISAPPROVE THE PROCUREMENT OFFICER'S DECISION. IN DISAPPROVING A DECISION NOT TO SETTLE, THE REVIEWING AUTHORITY MAY ORDER THE PROCUREMENT OFFICER TO SETTLE THE DISPUTE. THE DECISION OF THE REVIEWING AUTHORITY IS DEEMED FINAL ACTION BY THE AGENCY, DEPARTMENT OR ITS EQUIVALENT, AS THE CASE MAY BE.

(E) AN APPROVED SETTLEMENT IS JUDICIALLY ENFORCEABLE IN THE APPROPRIATE COURT.

(F) (1) WITHIN 15 DAYS OF RECEIPT OF NOTICE OF A FINAL ACTION DISAPPROVING A SETTLEMENT OR APPROVING A DECISION NOT TO SETTLE A DISPUTE RELATING TO THE FORMATION OF A STATE CONTRACT, THE BIDDER OR OFFEROR OR PROSPECTIVE BIDDER OR OFFEROR MAY APPEAL THE ACTION TO THE STATE PROCUREMENT BOARD WHICH MAY, WITHOUT A HEARING, DECIDE THE DISPUTE. THE DECISION OF THE STATE PROCUREMENT BOARD IS FINAL ONLY SUBJECT TO JUDICIAL REVIEW.

(2) WITHIN 30 DAYS OF RECEIPT OF NOTICE OF A FINAL ACTION DISAPPROVING A SETTLEMENT OR APPROVING A DECISION NOT TO SETTLE A DISPUTE RELATING TO A CONTRACT ENTERED INTO BY THE STATE, THE CONTRACTOR MAY, IN ACCORDANCE WITH THE PROVISIONS OF THE ADMINISTRATIVE PROCEDURE ACT, APPEAL TO THE MARYLAND STATE BOARD OF CONTRACT APPEALS.

8-202.

(A) (1) THERE IS A MARYLAND STATE BOARD OF CONTRACT APPEALS, REFERRED TO IN THIS TITLE AS THE BOARD.

(2) THE BOARD IS AN INDEPENDENT AGENCY WITHIN THE EXECUTIVE BRANCH AND MAY NOT, EXCEPT BY STATUTE, BE MADE PART OF ANY DEPARTMENT OR AGENCY.

(B) (1) THE BOARD CONSISTS OF THREE MEMBERS, EACH 1507
APPOINTED BY THE GOVERNOR WITH THE ADVICE AND CONSENT OF THE 1508
SENATE.

(2) THE MEMBERS OF THE BOARD SHALL BE QUALIFIED 1510
TO SERVE IN A QUASI-JUDICIAL CAPACITY AND SHALL HAVE A 1511
THOROUGH KNOWLEDGE OF PROCUREMENT PRACTICES AND PROCESSES.

(3) MEMBERS INITIALLY APPOINTED SHALL SERVE 1513
UNTIL FEBRUARY 1, 1983. THEREAFTER, THE MEMBERS SHALL HAVE 1514
4-YEAR TERMS. HOWEVER, A MEMBER SHALL CONTINUE SERVING 1515
BEYOND HIS TERM UNTIL THE APPOINTMENT AND QUALIFICATION OF
HIS SUCCESSOR.

(4) IN THE EVENT OF A VACANCY ON THE BOARD, THE 1517
GOVERNOR SHALL APPOINT, WITH THE ADVICE AND CONSENT OF THE 1518
SENATE, A SUCCESSOR TO SERVE THE REMAINDER OF THE UNEXPIRED 1519
TERM.

(5) A MEMBER OF THE BOARD MAY BE REMOVED FOR 1521
CAUSE BY THE GOVERNOR.

(6) MEMBERS OF THE BOARD SHALL SERVE FULL TIME, 1523
RECEIVE THE COMPENSATION PROVIDED FOR IN THE BUDGET, AND BE 1524
REIMBURSED FOR EXPENSES UNDER THE STANDARD STATE TRAVEL 1525
REGULATIONS.

(7) THE BOARD SHALL HAVE SUCH STAFF AS IS 1527
PROVIDED FOR IN THE BUDGET.

(8) THE GOVERNOR SHALL DESIGNATE ONE OF THE 1529
MEMBERS OF THE BOARD TO SERVE AS CHAIRMAN.

(C) (1) THE BOARD SHALL HAVE JURISDICTION TO HEAR 1531
AND DECIDE ALL APPEALS ARISING UNDER THE PROVISIONS OF 1532
SECTION 8-201(F)(2) OF THIS ARTICLE.

(2) PROCEEDINGS BEFORE THE BOARD SHALL BE 1534
CONDUCTED IN ACCORDANCE WITH THE PROVISIONS OF THE 1535
ADMINISTRATIVE PROCEDURE ACT AS THEY RELATE TO CONTESTED
CASES BEFORE AGENCIES. THE BOARD SHALL, IN ACCORDANCE WITH 1536
THE PROVISIONS OF THE ADMINISTRATIVE PROCEDURE ACT, ADOPT 1537
REGULATIONS WHICH ARE NOT INCONSISTENT WITH THAT ACT TO 1538
PROVIDE FOR INFORMAL, EXPEDITIOUS AND INEXPENSIVE RESOLUTION
OF APPEALS BEFORE THE BOARD. 1539

(3) A MEMBER OF THE BOARD MAY NOT PARTICIPATE 1541
IN ANY DETERMINATION OR VOTE IN ANY PROCEEDING IN WHICH THE 1542
MEMBER HAS A CONFLICT OF INTEREST.

8-203. 1544

THE DECISIONS OF THE BOARD ARE SUBJECT TO JUDICIAL 1546
REVIEW IN ACCORDANCE WITH THE PROVISIONS OF THE 1547
ADMINISTRATIVE PROCEDURE ACT AS THEY RELATE TO JUDICIAL 1548
REVIEW OF CONTESTED CASES.

SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 1550
 231-IB of Article 41 - Governor - Executive and 1551
 Administrative Departments, of the Annotated Code of 1552
 Maryland be and it is hereby transferred to be Section(s)
 3-405 of the new Article 21 - Procurement, of the Annotated 1553
 Code of Maryland.

SECTION 3. AND BE IT FURTHER ENACTED, That Section(s) 1555
 9-113 of Article - Real Property, of the Annotated Code of 1556
 Maryland be and it is hereby transferred to be Section(s) 1557
 3-504 of the new Article 21 - Procurement, of the Annotated
 Code of Maryland. 1558

SECTION 4. AND BE IT FURTHER ENACTED, That Section(s) 1560
 10A(a), (b), (c), and (d), respectively, of Article 41 - 1562
 Governor - Executive and Administrative Departments, of the 1563
 Annotated Code of Maryland be and they are hereby 1564
 transferred to be Section(s) 8-101 through 8-104,
 respectively, of the new Article 21 - Procurement, to be 1566
 under "Title 8. Administrative and Civil Remedies" and the 1567
 subtitle "Subtitle 1. Defense of Sovereign Immunity in
 Actions in Contract", of the Annotated Code of Maryland. 1568

SECTION 5. AND BE IT FURTHER ENACTED, That Section(s) 1570
 231G-2 and 231M-1, respectively, of Article 41 - Governor - 1571
 Executive and Administrative Departments, of the Annotated 1573
 Code of Maryland be and they are hereby transferred to be
 Section(s) 9-101 to be under the new title "Title 9. 1575
 Socio-Economic Policies" and the subtitle "Subtitle 1. Small
 Business Set Asides"; and 9-201 to be under the new subtitle 1577
 "Subtitle 2. Disadvantaged Business Preference",
 respectively, of the new Article 21 - Procurement, of the 1579
 Annotated Code of Maryland.

SECTION 6. AND BE IT FURTHER ENACTED, That Section(s) 1581
 6A and 6B, respectively, of Article 30 - Deaf, Mute or 1583
 Blind, of the Annotated Code of Maryland be and they are
 hereby transferred to be Section(s) 9-202 and 9-203, 1585
 respectively, of the new Article 21 - Procurement, of the 1586
 Annotated Code of Maryland. 1587

SECTION 7. AND BE IT FURTHER ENACTED, That Section(s) 1589
 681 of Article 27 - Crimes and Punishments, of the Annotated 1591
 Code of Maryland be and it is hereby transferred to be
 Section(s) 9-204 of the new Article 21 - Procurement, of the 1593
 Annotated Code of Maryland.

SECTION 8. AND BE IT FURTHER ENACTED, That Section(s) 1595
 231-I and 231-IA, respectively, of Article 41 - Governor - 1597

Executive and Administrative Departments, of the Annotated Code of Maryland be and they are hereby transferred to be Section(s) 9-301 to be under the new subtitle "Subtitle 3. Resident Business Preference"; and 9-401 to be under the new subtitle "Subtitle 4. Priorities Among Preferences", respectively, of the new Article 21 - Procurement, of the Annotated Code of Maryland.

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SECTION 9. AND BE IT FURTHER ENACTED, That Section(s) 96, 97, 97A, 98 through 105, 105A, 106, 107, and 107A, respectively, of Article 100 - Work, Labor and Employment, of the Annotated Code of Maryland be and they are hereby transferred to be Section(s) 9-501 through 9-515, respectively, to be under the new subtitle "Subtitle 5. Contracts for Public Works", of the new Article 21 - Procurement, of the Annotated Code of Maryland.

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SECTION 10. AND BE IT FURTHER ENACTED, That Section(s) 2-301 through 2-318, respectively, of Article - Transportation, of the Annotated Code of Maryland be and they are hereby transferred to be Section(s) 10-101 through 10-118, respectively, to be under the new title "Title 10. Procurement of Architect-Engineer Services" and the new subtitle "Subtitle 1. Transportation Agencies - Architect-Engineer Services", of the new Article 21 - Procurement, of the Annotated Code of Maryland.

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SECTION 11. AND BE IT FURTHER ENACTED, That Section(s) 231N through 231EE, respectively, of Article 41 - Governor - Executive and Administrative Departments, of the Annotated Code of Maryland be and they are hereby transferred to be Section(s) 10-201 through 10-218, respectively, to be under the new title "Title 10. Procurement of Architect-Engineer Services" and the new subtitle "Subtitle 2. General Using Authorities - Architect-Engineer Services", of the new Article 21 - Procurement, of the Annotated Code of Maryland.

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SECTION 12. AND BE IT FURTHER ENACTED, That Chapter 418 of the Acts of the General Assembly of 1978 is hereby repealed.

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SECTION 13. AND BE IT FURTHER ENACTED, That the person appointed to the position of Chairman of the Board of Contract Appeals of the Department of Transportation pursuant to Chapter 418 of the Acts of 1978 shall be the Chairman of the Maryland State Board of Contract Appeals created by this Act. That individual shall retain all of the rights, status, salary, and benefits that he was entitled to prior to the repeal of Chapter 418 and shall serve from July 1, 1979 to February 1, 1983.

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SECTION 14. AND BE IT FURTHER ENACTED, That if any provision of this Act or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Act which can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are declared severable.

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SECTION 15. AND BE IT FURTHER ENACTED, That all laws or parts of laws, public general or public local, including all laws or parts of laws enacted by the 1979 Session of the General Assembly, that are inconsistent with this Act, are repealed to the extent of the inconsistency.

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SECTION 16. AND BE IT FURTHER ENACTED, That although a presently existing obligation or contract right may not be impaired in any way by this Act, the procedural provisions of this Act, including those requiring review by the Maryland State Board of Contract Appeals, shall apply to contracts in force on the effective date of such provisions.

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SECTION 17. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 1979. However, Sections 2-301, 3-201 through 3-206, 3-301, 3-401, 3-403, 3-802, and 4-101 of Article 21 as enacted by Section 1 of this Act shall not take effect until July 1, 1980.

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SENATE OF MARYLAND

9lr3755

No. 1108

3800-02100

By: Senators Crawford, Cade, Cushwa, Douglass, Dypski, and Rasmussen (Purchasing and Procurement Policies Task Force) 26

Introduced and read first time: March 2, 1979 28

Assigned to: Rules 30

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A BILL ENTITLED

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AN ACT concerning

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State Procurement - Corrective

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FOR the purpose of transferring certain provisions of existing Articles of the Code relating and pertaining to State procurement of supplies, services, and construction to a new Article entitled "Article 21 - Procurement"; changing certain provisions of existing procurement law for compatability with the provisions of the new Procurement Article; substituting references to the Board of Public Works with the State Procurement Board in certain provisions of the Code pertaining to contracting and procurement authority; providing for the contingent effectiveness of this measure; and generally relating to State procurement law. 53

BY transferring, with amendments, 56

Article 41 - Governor - Executive and Administrative Departments 58

Section 231M-2 59

Annotated Code of Maryland 60

(1978 Replacement Volume and 1978 Supplement) 61

to be 62

Article 21 - Procurement 64

Section 3-406 66

Annotated Code of Maryland 67

(1973 Replacement Volume and 1978 Supplement) 68

69

BY transferring, with amendments,

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Article 78A - Public Works

Section 16D 73

Annotated Code of Maryland 74

(1975 Replacement Volume and 1978 Supplement) 75

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Numerals at right identify computer lines of text.

to be	78
Article 21 - Procurement	80
Section 3-407	81
Annotated Code of Maryland	82
(1973 Replacement Volume and 1978 Supplement)	83
BY transferring, with amendments,	85
Article 78A - Public Works	87
Section 7A	88
Annotated Code of Maryland	89
(1975 Replacement Volume and 1978 Supplement)	90
to be	92
Article 21 - Procurement	94
Section 3-505	95
Annotated Code of Maryland	96
(1973 Replacement Volume and 1978 Supplement)	97
BY transferring, with amendments,	99
Article 64A - Merit System	101
Section 15A	102
Annotated Code of Maryland	103
(1972 Replacement Volume and 1978 Supplement)	104
to be	106
Article 21 - Procurement	108
Section 3-901	109
Annotated Code of Maryland	110
(1973 Replacement Volume and 1978 Supplement)	111
BY transferring, with amendments,	113
Article 41 - Governor - Executive and	115
Administrative Departments	116
Section 14B(c)	117
Annotated Code of Maryland	118
(1978 Replacement Volume and 1978 Supplement)	119
to be	121
Article 21 - Procurement	123
Section 9-402	124
Annotated Code of Maryland	125
(1973 Replacement Volume and 1978 Supplement)	126
BY renumbering	128

Article 41 - Governor - Executive and Administrative Administrative Departments	131 132
Section 14B(d), (e), and (f), respectively	133
to be Sections 14B (c), (d), and (e), respectively	134
Annotated Code of Maryland	135
(1978 Replacement Volume and 1978 Supplement)	136
BY transferring, with amendments,	138
Article 41 - Governor - Executive and Administrative Departments	140 141
Section 14G	142
Annotated Code of Maryland	143
(1978 Replacement Volume and 1978 Supplement)	144
to be	146
Article 21 - Procurement	148
Section 9-601	149
Annotated Code of Maryland	150
(1973 Replacement Volume and 1978 Supplement)	151
BY transferring, with amendments,	153
Article 78A - Public Works	155
Section 69 through 73, respectively	156
Annotated Code of Maryland	157
(1975 Replacement Volume and 1978 Supplement)	158
to be	160
Article 21 - Procurement	162
Section 9-701 through 9-705, respectively	163
Annotated Code of Maryland	164
(1973 Replacement Volume and 1978 Supplement)	165
BY repealing and reenacting, with amendments,	167
Article 15A - Budget and Fiscal Planning	170
Section 23A	172
Annotated Code of Maryland	174
(1976 Replacement Volume and 1978 Supplement)	175
By repealing and reenacting, without amendments,	177
Article 41 - Governor - Executive and Administrative Departments	180 181
Section 181E(a)	182
Annotated Code of Maryland	183
(1978 Replacement Volume and 1978 Supplement)	184

4. SENATE BILL No. 1108

BY repealing and reenacting, with amendments,	187
Article 41 - Governor - Executive and	190
Administrative Departments	191
Section 181E(c), (g), and (1)(1), 231G, 256L,	193
266DD-5(a), and 374	
Annotated Code of Maryland	195
(1978 Replacement Volume and 1978 Supplement)	196
BY adding to	199
Article 78A - Public Works	202
Section 1B	204
Annotated Code of Maryland	206
(1975 Replacement Volume and 1978 Supplement)	207
BY repealing and reenacting, with amendments,	210
Article 78A - Public Works	213
Section 7, 8(1), 20, 21, 22, 24(b), 45, and 68	215
Annotated Code of Maryland	217
(1975 Replacement Volume and 1978 Supplement)	218
BY repealing and reenacting, with amendments,	221
Article 88B - State Police	224
Section 22(c)	226
Annotated Code of Maryland	228
(1969 Replacement Volume and 1978 Supplement)	229
BY repealing and reenacting, with amendments,	232
Article 88D - State Lottery	235
Section 8(h)	237
Annotated Code of Maryland	239
(1969 Replacement Volume and 1978 Supplement)	240
BY repealing and reenacting, with amendments,	243
Article 95 - Treasurer	246
Section 27A and 34	248
Annotated Code of Maryland	250
(1969 Replacement Volume and 1978 Supplement)	251
BY repealing and reenacting, with amendments,	254
Article - Natural Resources	257
Section 10-804	259
Annotated Code of Maryland	261

(1974 Volume and 1978 Supplement)	262
BY repealing and reenacting, with amendments,	265
Article - Transportation	268
Section 2-103(h), 5-213(b), 5-408, 5-409(a), 5-411(c),	270
7-208(a), 7-403, 7-604(b), 8-503(b), 8-505(b),	271
8-614, and 8-639(b)	
Annotated Code of Maryland	273
(1977 Volume and 1978 Supplement)	274
BY repealing	276
Article 41 - Governor - Executive and Administrative	279
Departments	280
Section 231L	281
Annotated Code of Maryland	282
(1978 Replacement Volume and 1978 Supplement)	283
BY repealing	285
Article 78A - Public Works	288
Section 7B	289
Annotated Code of Maryland	290
(1975 Replacement Volume and 1978 Supplement)	291
BY repealing	293
Article - Transportation	295
Section 5-214, 6-209, and 8-615	296
Annotated Code of Maryland	297
(1977 Volume and 1978 Supplement)	298
SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF	302
MARYLAND, That Section(s) 231M-2 of Article 41 - Governor -	303
Executive and Administrative Departments, of the Annotated	304
Code of Maryland be and it is hereby transferred, with	
amendments, to be Section(s) 3-406 of the new Article 21 -	305
Procurement, of the Annotated Code of Maryland, to read as	306
follows:	
ARTICLE 21 - PROCUREMENT	309
[231M-2.] 3-406.	312
Notwithstanding any provisions of § [8-614(e) of the	315
Transportation Article or § 9-113 of the Real Property	316
Article] 3-504 OF THIS ARTICLE to the contrary, no agency of	318
the State involved in purchasing goods and services,	
including construction and repair contracts, may require	319
bid, performance, and payment bonds to be posted if the	320

contract price is less than \$25,000, unless such bonds are 321
 required by federal law or regulation or as a condition to 322
 federal assistance.

SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 324
 16D of Article 78A - Public Works, of the Annotated Code of 325
 Maryland be and it is hereby transferred, with amendments, 326
 to be Section(s) 3-407 of the new Article 21 - Procurement,
 of the Annotated Code of Maryland, to read as follows: 327

ARTICLE 21 - PROCUREMENT 330

[16D.] 3-407. 333

(a) For the purposes of this [subtitle] SECTION: 336

(1) A reference to the "State" or a 339
 "subdivision" shall include any bicounty or multicounty 340
 governmental agency located within the State; and 341

(2) The word "conviction" shall include an 344
 accepted plea of nolo contendere. 345

(b) Any person convicted under the provisions of 348
 Article 27 of the Annotated Code, of bribery, attempted 349
 bribery or conspiracy to bribe based upon acts committed 350
 after July 1, 1977 in furtherance of obtaining a contract 351
 with the State or any of its subdivisions, shall be
 disqualified from entering into a contract with the State, 352
 or any county or other subdivision of the State, for the 353
 supply of goods or services by the person. 354

(c) A person not disqualified under the provisions of 358
 subsection (b) who (1) has been convicted under the 359
 provisions of Article 27 of the Annotated Code, of bribery,
 attempted bribery, or conspiracy to bribe, (2) during the 360
 course of an official investigation or other proceeding has 361
 admitted, in writing or under oath, acts or omissions which 362
 would constitute bribery, attempted bribery, or conspiracy 363
 to bribe under the provisions of that article, or (3) has 364
 been convicted under the laws of another state or the
 federal government of bribery, attempted bribery, or 365
 conspiracy to bribe, shall be subject to disqualification, 366
 pursuant to the procedure hereunder established, from 367
 entering into a contract with the State, or any county or 368
 other subdivision of the State, for the supply of goods or
 services by the person. However, a person is subject to 369
 disqualification only for those acts or omissions committed 370
 after July 1, 1977 which constitute or result in a 371
 conviction of bribery, attempted bribery, or conspiracy to 372
 bribe.

(d) Upon notification that a person subject to 376
 disqualification pursuant to subsection (c) has submitted a 377
 bid or otherwise applied for a contract with the State or

any subdivision thereof to provide goods or services, the Board [of Public Works] or any other state or county contracting agency involved shall notify that person in writing of his possible disqualification and of his right to a hearing. A person receiving such notice shall be deemed to have waived his right to a hearing and shall be deemed disqualified unless, within 30 days of receipt of the notice, he submits to the Board a written request for a hearing.

(e) Within 90 days after receipt of a request for a hearing from a person notified pursuant to subsection (d) or from any person who believes he may be subject to disqualification, the Board or a hearing examiner appointed by the Board shall conduct a hearing and the Board shall determine whether the person should be disqualified. The time for hearing and determination may be extended by the Board for good cause shown. In making its determination the Board shall consider (1) all of the facts and circumstances surrounding the acts rendering the person subject to disqualification including, but not limited to, the nature of the acts involved, whether and to what extent he subsequently cooperated with the appropriate authorities in their investigation of the matter, the conditions under which he cooperated, and the time when the acts occurred, and (2) the conduct of the person since the acts were performed, and conclude whether or not the integrity of the contracting process and the best interests of the State would be served by disqualifying the person from entering into contracts with governmental entities within the State. Upon making its determination, the Board shall notify the person subject to disqualification in writing either that (i) he is disqualified or (ii) he is no longer subject to disqualification for the acts which were the subject of the hearing and determination.

(f) (1) Any person disqualified under the provisions of this [subtitle] SECTION may, after a period of five years from the date of his disqualification, petition the Board for removal of his disqualification. Within 90 days after receipt of such a petition, the Board or a hearing examiner appointed by the Board shall conduct a hearing and the Board shall determine whether the person's disqualification should be removed. The time for hearing and determination may be extended by the Board for good cause shown. In making its determination, the Board shall consider the factors set forth in subsection (e) and conclude whether or not the integrity of the contracting process and the best interests of the State would be served by continuing the person's disqualification. Upon making its determination, the Board shall notify the petitioner in writing either that (i) his disqualification has been removed or (ii) his disqualification has been continued.

(2) If the conviction forming the basis for disqualification of any person under subsection (b) or (e)

is reversed or otherwise rendered void, that person's
disqualification shall automatically terminate. 429

(g) The Attorney General shall conduct an 432
investigation of the matters to be determined by the Board 433
in any hearing under this section and shall present to the 434
Board, as a party to the proceedings, such evidence as he
deems appropriate. Hearings under this section shall be 435
conducted in accordance with Article 41, subtitle 24, the 436
Administrative Procedure Act, and any party aggrieved by a 437
decision of the Board is entitled to judicial review. 438

(h) Every business entity, including an individual, 442
upon submitting a bid or otherwise applying for a contract 443
with the State, or any county or other subdivision of the
State, for the supply of goods or services by the business 444
entity shall submit an affidavit stating, to its best 445
knowledge, whether it or (1) any of its officers, directors 446
or partners, or (2) any of its employees directly involved 447
in obtaining contracts with the State, or any county or 448
other subdivision of the State, has been convicted of
bribery, attempted bribery, or conspiracy to bribe under the 449
laws of any state or federal government. 450

(i) Any business entity, including an individual, of 454
which the person disqualified under subsection (b) or (e) is 455
(1) an officer, director, or partner, or (2) an employee 456
directly involved in the process of obtaining contracts with
the State, or any county or other subdivision of the State, 457
is disqualified from entering into a contract with the
State, or any county or other subdivision of the State, for 458
the supply of goods or services by the business entity, and 459
the Board shall notify the business entity in writing. A 460
business entity disqualified under this section shall remain 461
disqualified so long as that person remains with the 462
business entity in any such capacity. 463

(j) Neither the State, nor any county or other 467
subdivision of the State, shall knowingly award or enter 468
into any contract whereby goods or services will be supplied 469
directly or indirectly to the State, or any county or other 470
subdivision of the State, by a person or business entity
disqualified under this section. 471

(k) (1) The clerk of the circuit court of each county 475
and the clerk of the Criminal Court of Baltimore City shall
send to the Board [of Public Works] a certified copy of each 476
judgment of conviction of an offense described in 477
subsections (b) or (c) and of each docket entry reflecting 478
the acceptance of a plea of nolo contendere to such an 479
offense.

(2) The prosecuting officer of the State or any 482
of its subdivisions having responsibility for any 483
investigation or other proceeding in which a person admits 484
acts or omissions which would subject that person to

disqualification under subsection (c) shall transmit to the Board [of Public Works] a copy or summary of the written statement or transcript reflecting that admission as soon as the prosecuting officer determines that such action will not prejudice any pending or anticipated investigation or other proceeding. The Board [of Public Works] shall keep a roster of all persons and business entities disqualified or subject to disqualification under this section. The roster shall be a public record.

SECTION 3. AND BE IT FURTHER ENACTED, That Section(s) 7A of Article 78A - Public Works, of the Annotated Code of Maryland be and it is hereby transferred, with amendments, to be Section(s) 3-505 of the new Article 21 - Procurement, of the Annotated Code of Maryland, to read as follows:

ARTICLE 21 - PROCUREMENT

[7A.] 3-505.

(a) A contract for any construction work subject to [§ 7 of] this article may not be awarded to any contractor unless the contract contains provisions obligating the contractor not to discriminate in any manner against any employee or applicant for employment because of sex, race, creed, color or national origin and obligating the contractor to include a similar clause in all subcontracts, except subcontracts for standard commercial supplies or raw materials. In addition, the contractor and subcontractor shall agree to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of the nondiscrimination clause.

(b) Failure to include such a contract provision renders any contract void ab initio, but any party shall be entitled to the reasonable value of services performed and materials supplied. However, the State may elect to compel the performance of any contract under this section not containing the nondiscrimination provisions, but recovery against the proper party shall be limited to the reasonable value of services performed and materials supplied.

(c) Where the contractor wilfully fails to comply with the nondiscrimination provisions the State may, where the contract is still executory in part, compel continued performances of the contract, but it shall be liable only for the reasonable value of services performed and materials supplied from the date that the breach of contract was discovered or should have been discovered, and any sums previously paid by the State under the contract, shall be set off against the sums to become due as the contract is performed.

(d) If the subcontractor wilfully fails to comply with the nondiscrimination provisions the contractor may avoid the contract note and shall be liable only for the

reasonable value of the services performed and materials supplied. 540

(e) Any person, whether an employee, prospective employee or not with information concerning violations of the requirements of this section may inform the Board [of Public Works] which shall cause an immediate investigation of the charges. If the Board concludes that the charges are true it shall invoke the remedies set out in this section. 543
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SECTION 4. AND BE IT FURTHER ENACTED, That Section(s) 15A of Article 64A - Merit System, of the Annotated Code of Maryland be and it is hereby transferred, with amendments, to be Section(s) 3-901 to be under the new title "Title 3. Source Selection and Contract Formation" and the subtitle "Subtitle 9. Contractual Employees", of the new Article 21 - Procurement, of the Annotated Code of Maryland, to read as follows: 549
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ARTICLE 21 - PROCUREMENT 557

[15A.] 3-901. 560

(a) (1) In this [section] SUBTITLE the following words have the meanings indicated. 563
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(2) "Contractual employee" means a person providing personal services to the State for remuneration provided that: 567
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(i) The services and remuneration are specified in an agreement; 571

(ii) An employer-employee relationship exists; and 574

(iii) The person is not employed as a classified, unclassified or temporary extra employee. 577
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(3) "Employer-employee relationship" means conditions of employment such that: 581
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(i) The State has the right to control and direct the performance of services, not only as to results but also as to details and means; 585
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(ii) The State has the right to discharge the employee; and 589

(iii) The State furnishes necessary tools and a place to work. 592

(b) An agency of the executive may not execute or renew a contract for the employment of a contractual employee unless: 596
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(1) The Secretary of Personnel has issued a certification to the agency that:	600 601
(i) The employment of the contractual employee is for services that could not be rendered by assignment or hiring of a classified or unclassified employee; and	604 605 606
(ii) The rate of remuneration for the contractual employee is comparable to the rate paid for positions in the classified or unclassified service involving comparable duties, responsibilities, experience, and authority; or	609 610 611 612
(2) The contractual employment is exempt from certification pursuant to this section.	615 616
(c) The Secretary may limit the effective term of the certification required under subsection (b), but in no event may the Secretary issue a certification with an effective term which exceeds the term of the employment contract or agreement between the executive agency and the contractual employee.	620 621 622 623
(d) Recruitment and selection of any contractual employee by an agency of the executive shall be conducted, to the extent feasible, according to guidelines developed by the Secretary of Personnel. The guidelines shall require:	627 628 629
(1) A reasonable effort by the contracting authority publicly to solicit applicants for the contractual employment;	632 633
(2) A reasonable effort by the contracting authority to screen and select contractual employees by methods and criteria which are uniformly applied to all applicants for any particular instance of contractual employment; and	636 637 638 639
(3) Utilization of selection criteria for contractual employees which are based upon qualifications of the applicant exclusive of political or religious opinion or affiliation, marital status, race, color, creed, national origin, sex, physical or mental handicap, or age, except when sex, handicap, or age involves a bona fide job requirement.	642 643 644 645 646
(e) The Secretary of Personnel periodically shall audit a sample of instances of contractual employment in the various agencies of the executive to determine whether justification exists for continuation of the certification required under subsection (b); and to determine whether the guidelines required by subsection (d) have been followed.	650 651 652 653 654

(f) If, as the result of an audit pursuant to subsection (e), the Secretary determines that the services being performed by a contractual employee should be performed by an employee in the classified service, he shall refuse to renew the certificate issued under subsection (b); and he shall recommend to the Department of Budget and Fiscal Planning that a classified position be established.

(g) If, as the result of an audit pursuant to subsection (e), the Secretary determines that the guidelines required under subsection (d) have not been followed, he shall advise the contracting authority as to the nature of the deviation from the guidelines, and he shall suggest to the contracting authority alternate methods or criteria which would have resulted in compliance with the guidelines.

(h) The provisions of this section do not apply to the contractual employment of any type designated by the Secretary of Personnel to be exempt from provisions of this section.

(i) The Secretary of Personnel shall include the following information in the annual reports required by Section 10 of [this article] ARTICLE 64A:

(1) A summary by department of all certificates issued pursuant to subsection (b) during the previous fiscal year;

(2) A summary of the results of audits undertaken pursuant to subsection (e) during the previous fiscal year;

(3) A detailed report of any actions taken under subsections (f) and (g) during the previous fiscal year; and

(4) A listing of any exemptions granted under subsection (h) during the previous fiscal year.

SECTION 5. AND BE IT FURTHER ENACTED, That Section(s) 14B(c) of Article 41 - Governor - Executive and Administrative Departments, of the Annotated Code of Maryland be and it is hereby transferred, with amendments, to be Section(s) 9-402 of the new Article 21 - Procurement, of the Annotated Code of Maryland, to read as follows:

ARTICLE 21 - PROCUREMENT

[14B.] 9-402.

[(c)] All units of State government shall acquire by purchase or lease, to the greatest extent practicable, the quietest available products for use by State government. Products certified by the Administrator of the United States Environmental Protection Agency as "low noise emission

products" pursuant to section 15 of the Noise Control Act of 1972 shall be considered to meet the intent of this section.

SECTION 6. AND BE IT FURTHER ENACTED, That Section(s) 14B(d), (e), and (f), respectively, of Article 41 - Governor - Executive and Administrative Departments, of the Annotated Code of Maryland be renumbered to be Section(s) 14B(c), (d), and (e), respectively.

SECTION 7. AND BE IT FURTHER ENACTED, That Section(s) 14G of Article 41 - Governor - Executive and Administrative Departments, of the Annotated Code of Maryland be and it is hereby transferred, with amendments, to be Section(s) 9-601 to be under the new title "Title 9. Socio-Economic Policies" and the subtitle "Subtitle 6. Purchases from Minority Businesses", of the new Article 21 - Procurement, of the Annotated Code of Maryland, to read as follows:

ARTICLE 21 - PROCUREMENT

[14G.] 9-601.

(a) In this [section] SUBTITLE the following words have the meanings indicated:

(1) "Department" means the State Departments of Education, General Services, and Transportation, the University of Maryland, and the Interagency Committee on Public School Construction.

(2) "Minority business enterprise" means any legal entity, other than a joint venture, organized to engage in commercial transactions which is at least 51 percent owned and controlled by one or more minority persons, or a nonprofit entity organized to promote the interests of the physically or mentally disabled.

(3) "Minority person" means a member of a socially or economically disadvantaged minority group, which for purposes of this [section] SUBTITLE includes Blacks (not of Hispanic origin), Hispanics, American Indians, Alaska natives, Asians, Pacific Islanders, women, and the physically or mentally disabled.

(b) (1) Each department, except the Department of Transportation, shall structure its procedures for purchasing materials, supplies, equipment, and services including construction services, to attempt to achieve, consistent with the preamble to this [section] SUBTITLE, the result that a minimum of 10 percent of the total dollar value of such purchases are made directly or indirectly from minority business enterprises.

(2) The Department of Transportation shall structure its procedures for purchasing construction services to attempt to achieve, consistent with the preamble to this [section] SUBTITLE, the result of minority business participation of a minimum of 10 percent of the dollar value of contract in excess of \$100,000 on the prime or subcontract level. In so doing, the Department of Transportation shall take into consideration the practical severability of the construction services.

(c) Each department shall report to the General Assembly and the State Office of Minority Business Enterprise by July 31 of each year beginning in 1979, the total number and value of its purchases from minority business enterprises, and the percentage which those purchases represent of its total number and value of its purchases for the preceding fiscal year.

(d) A department may suspend the provisions of subsection (b) if it concludes they conflict with any applicable federal program requirement. Any such suspension shall be in writing and shall be included with the report required by subsection (c).

(e) This [section] SUBTITLE shall have no further force and effect after June 30, 1983.

SECTION 8. AND BE IT FURTHER ENACTED, That Section(s) 69 through 73, respectively, of Article 78A - Public Works, of the Annotated Code of Maryland be and it is hereby transferred, with amendments, to be Section(s) 9-701 through 9-705, respectively, to be under the new title "Title 9. Socio-Economic Policies" and the subtitle "Subtitle 7. Steel Procurement for Public Works", of the new Article 21 - Procurement, of the Annotated Code of Maryland, to read as follows:

ARTICLE 21 - PROCUREMENT

[69.] 9-701.

(a) In this subtitle the following words have the meanings indicated,

(b) (1) "Contract" means all types of agreements and orders for the procurement or disposal of supplies, services, construction, or any other item.

(2) "Contract" includes awards and notices of award; contracts of a fixed price, cost, cost-plus-a-fixed-fee, or incentive types; contracts providing for the issuance of job orders, task orders, or task letters thereunder; letter contracts, and purchase orders.

(3) "Contract" also includes supplemental agreements with respect to any of the foregoing.	826 827
(c) "Person" means a natural person, corporation, partnership, or other business unit or association.	830 831
(d) "Public agency" means:	834
(1) The State of Maryland, its departments, agencies, boards, commissions, and institutions; and	837 838
(2) County, city, school or conservation districts, or other governmental units or districts that let public bids for construction or other public works under Maryland law.	841 842 843
(e) "Steel products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated, or otherwise similarly processed, or processed by a combination of two or more of such operations, from steel made in the United States by the open hearth, basic oxygen, electric furnace, Bessemer, or other steel making process.	846 847 848 849
(f) "United States" means the United States of America and includes all territory, continental or insular, subject to the jurisdiction of the United States.	850 853 854 855
[70.] 9-702.	858
(a) Each public agency shall require that every contract advertised for bid for the construction, reconstruction, alteration, repair, improvement, or maintenance of public works shall require use or supply of steel products only as defined by this subtitle in the performance of the contract or any of the subcontracts, unless the head of the public agency determines in writing that the cost of steel products is unreasonable or inconsistent with the public interest.	861 862 863 864 865 866 867
(b) The [head of each public agency] BOARD shall issue rules which provide that, for purposes of subsection (a) of this section, the bid or offered price of any steel products of domestic origin is not unreasonable if it does not exceed the sum of:	870 871 872 873
(1) The bid or offered price of like steel products of foreign origin (including any applicable duty); plus	876 877
(2) A differential of 20 percent of the bid or offered price of the steel products of foreign origin. However, if the steel products are produced in a "substantial labor surplus area" as defined by the United States Department of Labor, the differential applied under this paragraph shall be 30 percent.	880 881 882 883 884

[71.] 9-703.	887
A public agency may not authorize or make any payments to a person under a contract containing a provision required by § [70] 9-702 of this subtitle unless the public agency is satisfied that the person has fully complied with the provision. Payments made to a person by a public agency which should not have been made as a result of this section shall be recoverable to the full extent of the contract by the Attorney General directly from the person who did not comply with § [70] 9-702 upon a suit filed in the circuit court of the county or Baltimore City court with law and equity jurisdiction in which the contract was executed or performed.	890 891 892 893 894 895 896 897 898
[72.] 9-704.	901
The provisions of this subtitle do not apply where they are in conflict with any federal grant or regulation affecting the contract or the head of the public agency determines, in writing, that:	904 905 906
(1) The cost is determined to be unreasonable (as provided in § [70] 9-702);	909 910
(2) Steel products are not produced in the United States in sufficient quantities to meet the requirements of the contract; or	913 914
(3) Purchase of steel products, as defined, would be inconsistent with the public interest.	917 918
[73.] 9-705.	921
This subtitle may be cited as the "Buy American Steel" Act.	924
SECTION 9. AND BE IT FURTHER ENACTED, That section(s) of the Annotated Code of Maryland be repealed, amended, or enacted to read as follows:	927 928
Article 15A - Budget and Fiscal Planning	931
23A.	934
(A) CONSISTENT WITH ARTICLE 21 AND THE REGULATIONS ADOPTED UNDER IT, THE SECRETARY SHALL APPROVE AND SUBMIT TO THE STATE PROCUREMENT BOARD FOR CONCURRENCE, ALL PURCHASES, LEASES, OR RENTALS OF MOTOR VEHICLES FOR USE BY CERTAIN STATE OFFICIALS AND EMPLOYEES IN THE SEVERAL DEPARTMENTS, BOARDS, BUREAUS, COMMISSIONS, AND OTHER AGENCIES OF THE STATE GOVERNMENT. THE ACQUISITION OF MOTOR VEHICLES SHALL BE BASED ON THE LOWEST POSSIBLE INITIAL COST AND COST OF MAINTENANCE, AS FAR AS PRACTICABLE AND FEASIBLE.	937 938 939 940 941 942 943

[[a]] (B)(1) THE [Director] SECRETARY shall promulgate and enforce rules and regulations to assure an economical and efficient use of motor vehicles [in the several departments, boards, bureaus, commissions, and other] BY agencies of the State government.

[[b]] (2) These rules and regulations shall apply to all phases of the [purchase,] maintenance[,] and use of state-owned motor vehicles and the reimbursement of owners of privately owned motor vehicles, and shall be directed, (1) [to acquiring motor vehicles with the lowest possible initial cost and cost of maintenance, as far as practicable and feasible; (2)] to requiring effective, efficient, and inexpensive use of all motor vehicles; and [(3)] (2) to the compilation and maintenance of accurate and detailed cost accounting records covering [the acquisition and] any and all uses of all motor vehicles; and [(4)] (3) to requiring that pursuant to paragraph [(a)] (B) (1) of this section the method used to determine distribution of state-owned motor vehicles to State employees shall be to assign the allocated motor vehicles to those employees accumulating the highest mileage for official use.

[[c]] (3) The [Director] SECRETARY shall report in detail annually to the General Assembly the text of such rules and regulations currently in effect and the problems involved in assuring compliance with the directions and aims of this section.

Article 41 - Governor - Executive and Administrative Departments

181E.

(a) The trustees shall have the following powers and duties:

(c) To acquire and hold real and personal property of historic, aesthetic or cultural significance, by gift, purchase, devise, bequest, or by any other means, with the approval of the [Board of Public Works] STATE PROCUREMENT BOARD or its designee prior to the acquisition, and to preserve and administer in such properties; to charge reasonable admission fees to such properties and to determine which of such properties are deserving of State financial aid. In the acquisition of such properties, to acquire property adjacent thereto deemed necessary for the proper use and administration of historic, aesthetic or cultural property.

(g) To contract for services with, cooperate with and otherwise assist, [insofar as practicable,] CONSISTENT WITH ARTICLE 21 AND THE REGULATIONS ADOPTED UNDER IT, any agency of the State of Maryland or any of its political subdivisions, and any private agency or person in furtherance of the purpose of the Trust and to encourage

individual and community plans and zoning ordinances relating to the restoration, preservation, alteration and/or development of designated sites and areas particularly within the provisions of Article 66B, §§ 38-50 of the Annotated Code of Maryland.

(1) (1) With the approval of the [Board of Public Works] STATE PROCUREMENT BOARD, to enter into a lease or other agreement with the organization known generally as Historic Annapolis, Inc., whereby Historic Annapolis, Inc. is the managing agency of the plot of land generally known as the Paca Gardens, Annapolis, Maryland, subject to minimum standards as established in the agreement. The responsibilities of Historic Annapolis, Inc. may include construction of capital improvements and the daily administration of the area.

231G.

(a) Every [department, board, commission, bureau, division, institution and] USING agency of this State, [hereinafter called the using authorities,] AS DEFINED BY § 1-101(S) OF ARTICLE 21, shall purchase all materials, supplies and equipment, through or with the approval of the Secretary of General Services. [The Secretary shall prescribe rules and regulations under which estimates of the needs of using authorities shall be submitted, and requisition made, and under which contracts for purchases may be made. Except as may be otherwise permitted by other provisions of law regarding emergencies, all State purchase contracts in excess of \$5,000 shall be awarded on a competitive basis. However, the Secretary of General Services may negotiate and, subject to the approval of the Board of Public Works, award such contracts to other than the lowest bidder if the Secretary determines that to be in the best interests of the State. The Secretary may waive the requirement of awarding such contracts on a competitive basis if:

(i) The public health, and safety is endangered after a natural disaster or act of God;

(ii) A state of emergency is declared by the Governor; or

(iii) A bona fide single source of supply or a proprietary product or process is required; or

(iv) It is determined to be in the best interests of this State after approval of the Board of Public Works.

Each waiver and the reasons therefor shall be documented and recorded and immediately reported to the Maryland Register for printing in the next available issue.]

(b) The Secretary of General Services shall determine and formulate standards of all materials, supplies and equipment to be purchased for the using [authorities] AGENCIES of the State, CONSISTENT WITH ARTICLE 21 AND THE REGULATIONS ADOPTED UNDER IT.

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(c) [It] CONSISTENT WITH ARTICLE 21 AND THE REGULATIONS ADOPTED UNDER IT, IT shall be the duty of the Secretary of General Services to contract for or purchase all materials, supplies, and equipment, except those which the Secretary may determine are of a strictly perishable character, or which the Secretary may determine it is impracticable for the using [authorities] AGENCIES to purchase through or with the approval of the Secretary, or which may be purchased by using [authorities] AGENCIES under the authority and with the approval of the Secretary.

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(d) Estimates of the amount and quality of materials, supplies and equipment needed by the using [authorities] AGENCIES shall be submitted at such periods as may be prescribed by the Secretary of General Services. [When purchases are made through competitive bidding, the Secretary may require the successful bidder to furnish a bond to the State, with good and sufficient surety, conditioned that he will fully and faithfully perform the terms of the contract. The penalty of all such bonds shall be determined by the Secretary.]

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(e) No invoices for materials, supplies or equipment purchased by the Secretary of General Services or the using [authorities] AGENCIES, shall be paid until such invoices shall have received the approval of the Secretary. It shall be unlawful for any [using authorities] EMPLOYEES OF USING AGENCIES whose salaries and expenses are paid from the fees of his office to pay any contractor or seller for articles of any kind, unless the invoice approved by him is also approved by the Secretary. Any violation of this provision shall be cause for removal by the Governor.

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[After reasonable public invitations for proposals, a] A contract for printing every publication authorized by this subtitle shall be awarded [to the lowest responsible bidder and] pursuant to conditions as established by the STATE PROCUREMENT BOARD [AELR Committee. No officer or employee of the State may be interested in any purchase made by the State under the contract or otherwise].

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(a) In accordance with regulations promulgated by the Secretary of Economic and Community Development, any contract, arrangement or agreement entered into for purposes of carrying out its functions and responsibilities under § 266DD-4 hereof, shall be approved by the Secretary and where

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required by law OR REGULATION by the [Board of Public Works.] STATE PROCUREMENT BOARD. 1114

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The Commission, subject to approval of the Secretary of the Department of Economic and Community Development, may procure, sell, convey, assign, lease, or otherwise purchase, transfer, or dispose of any property acquired or held by it and entered into any contracts incident thereto, including but not limited to the authority to lease properties for residential or commercial use, for such term and such conditions as the Commission deems appropriate; except that leases made by the Commission shall be in immediate furtherance of the purposes of the Commission and not merely for investment purposes; and except that valuable lands and buildings transferred to the Commission by the State or purchased by the Commission with funds provided by the State shall not be conveyed or disposed of without the approval of the [Board of Public Works] STATE PROCUREMENT BOARD. For the purposes of this section the term valuable shall mean any property or thing in excess of \$5,000.00 in value. 1120
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Article 78A - Public Works 1137

1B. 1140

THE DUTIES, POWER, AND AUTHORITY OVER THE PROCUREMENT, MANAGEMENT, AND CONTROL OF ALL SUPPLIES, SERVICES, CONSTRUCTION, AND OTHER ITEMS ACQUIRED BY THE STATE IS VESTED WITH THE BOARD OF PUBLIC WORKS FUNCTIONING AS THE STATE PROCUREMENT BOARD AS PROVIDED IN ARTICLE 21 OF THE CODE. 1143
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7. 1149

[(1)] (A) The [Board of Public Works] STATE PROCUREMENT BOARD shall in like manner supervise the expenditure of all sums appropriated for the acquisition of [land,] buildings, equipment, new construction and other capital expenditures, except in connection with State roads, bridges and highways, whether made through the medium of a budget bill, a supplementary appropriation bill or a State bond issue bill, and all contracts for the expenditure thereof shall be subject to the approval of said Board before the same are executed, after review by the Secretary of General Services. [Except as may be otherwise permitted by other provisions of law regarding emergencies, all State construction contracts in excess of \$10,000 shall be awarded on a competitive basis. However, the Board of Public Works may approve the award of such contracts to other than the lowest bidder if the Board determines that to be in the best interest of the State.] 1152
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[(2)] (B) In any acquisition of REAL property from private owners, the Board of Public Works prior to the 1168
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acquisition shall obtain two independent appraisals of the property.	1171
[(3) (i) A negotiated or change order contract for construction in excess of \$10,000 may not be awarded unless the contractor first executes a truth-in-negotiation certificate stating that wage rates, and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting.	1174 1175 1176 1177 1178
(ii) The certification shall contain a provision that the original price of the contract and any additions to it, including profits or a fee, shall be adjusted to exclude any sums where the board determines the price was increased in those sums due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs.	1181 1182 1183 1184 1185
(iii) Adjustments to the contract shall be made within one year of the completion of the performance of the contract.	1188 1189
(iv) Any person who intentionally violates the provisions of this paragraph is guilty of a felony and upon conviction is subject to a fine not exceeding \$5,000, or imprisonment not exceeding five years, or both.	1192 1193 1194
(4) A cost-plus-a-percentage-of-cost type of contract is prohibited. A firm may not allow increased costs to accrue to obtain this type of contract. The provisions of this paragraph do not apply to changes, additions, or modifications which may be required during the performance of the contract.	1197 1198 1199 1200 1201
(5) (i) Each contract entered into by the State for construction shall contain a prohibition against contingent fees. For the breach or violation of this provision the Board of Public Works may terminate the agreement without liability and may deduct from the contract price, or otherwise recover, the full amount of the fee or consideration.	1204 1205 1206 1207 1208
(ii) Any person, partnership, or corporation, other than a bona fide employee or agent, who offers, agrees, or contracts to solicit or secure State contracts for construction, for any other person, partnership, or corporation, and whose fee is contingent upon or resulting from the making of a contract for professional services, is guilty of a felony and upon conviction is subject to the penalties provided in paragraph (3) (iv) of this section.	1211 1212 1213 1214 1215 1216 1217
(6) The Board may waive the requirements of paragraph (1) of this section as to awarding such contracts on competitive basis if:	1220 1221
(i) The public health and safety is endangered after a natural disaster or act of God;	1224 1225

(ii) A state of emergency is declared by the Governor; or	1228
(iii) A bona fide single source of supply or a proprietary product or process is required; or	1231 1232
(iv) Its Board determines it is in the best interests of this State.	1235
Each waiver and the reasons therefor shall be documented and recorded and immediately reported to the Maryland Register for printing in the next available issue.]	1237 1238
8.	1241
(1) The [Board of Public Works] STATE PROCUREMENT BOARD shall approve every lease and renewal of the lease of land, buildings or office space before it is executed by any [department, board, commission, State officer or institution] USING AGENCY of the State, AS DEFINED BY SECTION 1-101(S) OF ARTICLE 21, and may designate the location of any State agency, after review by the Secretary of General Services subject to the provisions of subsection (2) of this section.	1245 1246 1247 1248 1249 1250 1251 1252
20.	1255
Wherever used in this subtitle, the term "public improvement" shall include the construction, maintenance and repair of any and every building, structure or other public work now owned or hereafter constructed or acquired by the State of Maryland or any department, officer, board, commission or agency thereof, including any such public work acquired or constructed by the University of Maryland or constructed or acquired in whole or in part with State funds; except that nothing in this subtitle shall apply to public improvements made by the Department of Transportation of Maryland, or any of the agencies included within the Department of Transportation, housing authorities created pursuant to Article 44A of the Code of Public General Laws, Maryland-National Capital Park and Planning Commission, Washington Suburban Sanitary Commission, Baltimore County metropolitan district, Anne Arundel County sanitary commission, or any county, the City of Baltimore, any other incorporated town or city, or any agency thereof. The [Board of Public Works] STATE PROCUREMENT BOARD is authorized in its discretion to exempt specific projects of other departments or agencies of the State from the provisions of this subtitle.	1258 1259 1260 1261 1262 1263 1264 1265 1266 1267 1268 1269 1270 1271 1272 1273 1275 1276
21.	1279
The Department of General Services shall have supervision over and advise the [Board of Public Works] STATE PROCUREMENT BOARD and other State departments or	1282 1283 1284

(ii) A state of emergency is declared by the Governor; or 1228

(iii) A bona fide single source of supply or a proprietary product or process is required; or 1231
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(iv) Its Board determines it is in the best interests of this State. 1235

Each waiver and the reasons therefor shall be documented and recorded and immediately reported to the Maryland Register for printing in the next available issue.] 1237
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8. 1241

(1) The [Board of Public Works] STATE PROCUREMENT BOARD shall approve every lease and renewal of the lease of land, buildings or office space before it is executed by any [department, board, commission, State officer or institution] USING AGENCY of the State, AS DEFINED BY SECTION 1-101(S) OF ARTICLE 21, and may designate the location of any State agency, after review by the Secretary of General Services subject to the provisions of subsection (2) of this section. 1245
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Wherever used in this subtitle, the term "public improvement" shall include the construction, maintenance and repair of any and every building, structure or other public work now owned or hereafter constructed or acquired by the State of Maryland or any department, officer, board, commission or agency thereof, including any such public work acquired or constructed by the University of Maryland or constructed or acquired in whole or in part with State funds; except that nothing in this subtitle shall apply to public improvements made by the Department of Transportation of Maryland, or any of the agencies included within the Department of Transportation, housing authorities created pursuant to Article 44A of the Code of Public General Laws, Maryland-National Capital Park and Planning Commission, Washington Suburban Sanitary Commission, Baltimore County metropolitan district, Anne Arundel County sanitary commission, or any county, the City of Baltimore, any other incorporated town or city, or any agency thereof. The [Board of Public Works] STATE PROCUREMENT BOARD is authorized in its discretion to exempt specific projects of other departments or agencies of the State from the provisions of this subtitle. 1258
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21. 1279

The Department of General Services shall have supervision over and advise the [Board of Public Works] STATE PROCUREMENT BOARD and other State departments or 1282
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agencies, except those exempted in § 20 of this article, in connection with all engineering questions and matters pertaining to any and all public improvements, and all contracts, plans and specifications for any and all public improvements involving any engineering question shall be submitted to said Department and be subject to its approval.	1285 1286 1287 1288 1289
22.	1292
In addition to the general duties and powers assigned to the Department of General Services by § 21 above, said Department shall, CONSISTENT WITH ARTICLE 21 AND THE REGULATIONS ADOPTED UNDER IT:	1295 1296 1297
(1) Assist and advise the [Board of Public Works] STATE PROCUREMENT BOARD and other State departments and agencies on all matters of engineering, surveys, plans, specifications and contracts for public improvements and land acquisition that may come before said Board or in which such department or agency may be interested;	1300 1302 1303 1304 1305
(2) Select and appoint architects and engineers to prepare plans and specifications for all public improvements, such appointments to be subject, however, to the approval of the [Board of Public Works] STATE PROCUREMENT BOARD, and all such architects and engineers shall be subject to the rules and regulations of the Department of General Services;	1308 1309 1310 1312 1313
(3) Examine and approve all plans and specifications prepared in connection with the preparation and execution of all contracts for all public improvements;	1316 1317 1318
(4) Represent the [Board of Public Works] STATE PROCUREMENT BOARD at the opening of all bids for public improvements and tabulate, record and advise said Board on such bids;	1321 1323 1324
(5) Supervise all appraisals in connection with public improvements;	1327
(6) Inspect and approve materials, equipment, and methods used in making public improvements, and inspect public improvements during the course of construction or repair, such inspection and approval of materials, equipment and methods to be in addition to and not in lieu of the responsibility of the architect or engineer to supervise work for which employed;	1330 1331 1332 1333 1334 1335
(7) Review maintenance and operation of public improvements to the extent that any engineering questions are involved therein; and establish and supervise a comprehensive and continuing maintenance and repair program for all State-operated public improvements;	1338 1339 1340 1341

(8) Assist and advise the [Board of Public Works] STATE PROCUREMENT BOARD and other departments and agencies in the review and approval of changes in plan, specifications or contracts for public improvements;	1344 1346 1347
(9) Assist the Department of State Planning in the development of technical details necessary for the preparation of the capital improvement program of the State and its departments, institutions and other agencies;	1350 1351 1352 1353
(10) Assist the Department of State Planning in its regional studies relating to land acquisitions, transfers, dedications, leases, etc.;	1356 1357
(11) Collect and maintain records of construction costs and progress on all public improvements;	1360 1361
(12) Enforce the State Building Code;	1364
(13) Collect and maintain a complete and accurate file of drawings and plats of the location and situation of all public improvements, provided that all original drawings, plats, specifications and records shall be adequately stored and protected; and	1367 1368 1369 1370
(14) Perform such other functions and duties as may be delegated to it or requested of it by the [Board of Public Works] STATE PROCUREMENT BOARD.	1373 1374
24.	1377
(b) Pursuant to § 22 (7) of this article, the Department of General Services is required to establish and supervise a comprehensive and continuing maintenance and repair program for all State-operated public improvements. Prior to January 1, 1978, the Department of General Services shall establish general policies and standards applicable to maintenance and repair of public improvements and shall submit copies to the [Board of Public Works] STATE PROCUREMENT BOARD and to the Departments of Budget and Fiscal Planning and State Planning. The Departments of Budget and Fiscal Planning and State Planning are directed to assist the Department of General Services in the preparation of these policies and standards. Prior to January 1, of each year, the Department of General Services shall prepare and file any updates or amendments to these policies and standards with the [Board of Public Works] STATE PROCUREMENT BOARD and the Departments of Budget and Fiscal Planning and State Planning.	1380 1381 1382 1383 1384 1385 1386 1387 1388 1389 1390 1391 1392 1393 1395
45.	1398
The Commission, CONSISTENT WITH ARTICLE 21 AND THE REGULATIONS ADOPTED UNDER IT, is authorized and empowered to negotiate and contract with the federal government or any of its agencies for the purpose of obtaining funds or materials	1401 1402 1403 1405

to be used for the construction or maintenance of veterans' housing accommodations in the State. The Commission shall also have authority to receive from the federal government or any of its agencies any grant or federal funds or aid that is now or may hereafter become available which, in its discretion, will further the purposes of this subtitle. The Commission is further authorized to consult with and seek aid from representatives of the private building and other industries to formulate plans and recommendations as to the most efficient methods, in accordance with sound business and financial policies, to relieve the housing shortage. Any contract or agreement entered into by said Commission with the federal government or any of its agencies or private persons or corporations to which the State of Maryland is a party shall first be approved by the [Board of Public Works] STATE PROCUREMENT BOARD.

68.

The [Board of Public Works] STATE PROCUREMENT BOARD may require by rule or regulation that any contract, contract renewal, or attendant change order of a designated class or monetary value of any State department, board, commission, institution, or other agency of the executive branch, be brought before the [Board of Public Works] STATE PROCUREMENT BOARD for consideration and approval prior to execution. The provisions of this section are in addition to and not in lieu of other powers and authorities granted the [Board of Public Works] STATE PROCUREMENT BOARD.

Article 88B - State Police

22.

(c) The Department shall provide uniforms and equipment necessary for the performance of the duties of all employees to the extent permitted by the budget. All uniforms and equipment shall be purchased by the Department in accordance with [the regulations of the Department of Budget and Procurement] THE PROVISIONS OF ARTICLE 21 AND THE REGULATIONS ADOPTED UNDER IT and shall remain the property of the State.

Article 88D - State Lottery

8.

The director shall have the power, and it shall be his duty to:

(h) Subject to the approval of the Commission and [to any applicable laws relating to public contracts], CONSISTENT WITH ARTICLE 21 AND THE REGULATIONS ADOPTED UNDER IT, to enter into contracts for the operation of the lottery, or any part thereof, and into contracts for the promotion of the lottery. [All contracts shall be awarded to

the lowest responsible bidder, and shall be let for such period of years, not exceeding three, as the Commission may determine. No contract awarded or entered into by the director may be assigned by the holder thereof except by specific approval of the Commission.] 1466
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Article 95 - Treasurer 1472

27A. 1475

The Treasurer shall[, whenever possible,] place purchased insurance [by competitive bidding] with responsible companies[, however, at the discretion of the Treasurer, insurance may be purchased by negotiation where the circumstances indicate that negotiation is more practical and more beneficial to the State.] IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 21 AND THE REGULATIONS ADOPTED UNDER IT. 1478
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The Treasurer shall adopt regulations necessary to carry out his duties under this subtitle, which include, but are not limited to, policies and procedures for adjusting, approving, and paying losses, and for collecting recoveries on losses from private insurers. REGULATIONS ADOPTED CONCERNING PURCHASED INSURANCE SHALL BE IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 21 AND THE REGULATIONS ADOPTED UNDER IT. 1489
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Article - Natural Resources 1497

10-804. 1500

An acquired area of land or water may be used to create and maintain State wildlife refuges, for wildlife management, and hunting grounds as the Department deems advisable for hunting grounds. The Department may cut and remove and sell, or permit the cutting and removing and selling of timber on lands to which title has been acquired by purchase, gift, or otherwise AS PROVIDED BY ARTICLE 21 AND THE REGULATIONS ADOPTED UNDER IT. The net proceeds from the timber shall be deposited with the State Comptroller and placed to the credit of the State Game Protection Fund. The Department may grant rights-of-way on or across any acquired area of land or water if the grant does not affect adversely wildlife protection, management, and propagation. The Department may appoint a caretaker of the area of land or water and make an agreement with the caretaker for proper care and management of the wildlife refuge. 1503
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Article - Transportation 1519

2-103. 1522

(h) Consistent with the State budget, ARTICLE 21 AND THE REGULATIONS ADOPTED UNDER IT, and subject to approval of the [Board of Public Works] STATE PROCUREMENT BOARD, the Secretary may contract with any person to provide services, including consultant services, for the Department or for any transportation related purpose.	1525 1526 1527 1528 1529
5-213.	1532
(b) [Notwithstanding any other provision of State law, if] SUBJECT TO THE PROVISIONS OF ARTICLE 21 AND THE REGULATIONS ADOPTED UNDER IT, IF the planning, acquisition, construction, improvement, maintenance, or operation of any airport facility is financed with federal money, the Administration may contract as required by the federal authorities acting under federal law.	1535 1536 1537 1538 1539
5-408.	1541
(a) In its operation of an airport, airport facility, or air navigation facility owned or controlled by this State, the Administration, with the approval of the Secretary, may contract, lease, or otherwise arrange with any person CONSISTENT WITH THE PROVISIONS OF ARTICLE 21 AND THE REGULATIONS ADOPTED UNDER IT to:	1545 1546 1547 1548 1549
(1) Provide the person with services furnished by the Administration or its agents at the airport or facility; or	1552 1553
(2) Grant to the person the privilege of:	1556
(i) Using or improving for commercial purposes any part of the airport or facility; or	1559 1560
(ii) Supplying services, facilities, goods, commodities, or other things at the airport or facility.	1563 1564
(b) (1) A contract, lease, or other arrangement made under this section may be for any term not exceeding 30 years.	1568 1569
(2) For the privileges granted, the Administration may establish any terms and conditions and fix any charges, rentals, or fees that:	1572 1573
(i) Are reasonable and uniform for the same class of privilege or service;	1576 1577
(ii) Are established with due regard to the property and improvements used and the expenses of operation to this State; [and]	1580 1581
(iii) Do not deprive the public of its rightful, equal, and uniform use of any part of the airport or facility; AND	1584 1585

(IV) ARE CONSISTENT WITH THE PROVISIONS OF ARTICLE 21 AND THE REGULATIONS ADOPTED UNDER IT.	1587 1588
5-409.	1591
(a) With the approval of the Secretary, the Administration may, CONSISTENT WITH THE PROVISIONS OF ARTICLE 21 AND THE REGULATIONS ADOPTED UNDER IT, contract, lease, or otherwise arrange with any person to grant to the person the privilege of operating, as agent of this State or otherwise, any airport or airport facility owned or controlled by this State.	1595 1596 1597 1598 1599 1600
5-411.	1602
(c) In accepting federal money under this section, the Administration has the same authority to contract on behalf of this State as that granted to the Administration under § 5-422 of this subtitle for federal money accepted on behalf of a political subdivision, EXCEPT AS PROVIDED IN ARTICLE 21 AND THE REGULATIONS ADOPTED UNDER IT.	1605 1606 1607 1608 1609
7-208.	1612
(a) Subject to the authority of the Secretary and, where applicable, the Maryland Transportation Authority, the Administration has [exclusive] jurisdiction EXCEPT AS PROVIDED UNDER ARTICLE 21 AND THE REGULATIONS ADOPTED UNDER IT:	1616 1617 1618
(1) For planning, developing, constructing, acquiring, financing, and operating the transit facilities authorized by this title; and	1621 1622
(2) Over the services performed by and the rentals, rates, fees, fares, and other charges imposed for the services performed by transit facilities owned or controlled by the Administration.	1625 1626 1627
7-403.	1630
[(a) This section does not apply to contracts for professional services or the services of employees.	1633 1634
(b) (1) The Administration shall advertise and award on sealed bids to the lowest responsible bidder:	1637 1638
(i) Each contract costing over \$10,000 for the construction, reconstruction, or improvement of any transit facility; and	1641 1642
(ii) Each contract costing over \$5,000 for the purchase of supplies, equipment, and materials.	1645 1646

(2) For these contracts, a notice requesting bids shall be published: 1649
1650

(i) In a manner reasonably likely to attract prospective bidders; 1653

(ii) At least 10 days before the bids are to be received; and 1656

(iii) In at least two newspapers of general circulation in the District. 1659
1660

(3) In its discretion, the Administration may reject all bids and readvertise. 1663
1664

(c) (1) This subsection applies only to advertised contracts for the purchase of supplies, equipment, or materials. 1668
1669

(2) If, after rejecting bids, the Administration determines that, in its opinion, the supplies, equipment, or materials can be purchased at a lower price in the open market, the Administration, without further observing the provisions requiring bids or notice, may: 1672
1673
1674
1675

(i) Give each responsible bidder an opportunity to negotiate a price; and 1678
1679

(ii) Purchase the supplies, equipment, or materials in the open market at a negotiated price that is lower than the lowest rejected bid of a responsible bidder. 1682
1683
1684

(d) The Administration shall adopt rules and regulations to provide for contracting with or purchasing from the lowest responsible bidder when sealed bids, notice, and publication are not required by this section. 1687
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(e) The Administration may waive the provisions of this section requiring competitive bids if: 1694
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(1) The purchase is to be made from or the contract is to be made with the federal or any state government or any of their agencies or political subdivisions or under any open-end bulk purchase contract of any of them; 1698
1699
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(2) The public exigency requires the immediate delivery of the articles; 1704
1705

(3) Only one source of supply is available; or 1706

(4) In its judgment, it is to the benefit of the Administration to use the services of State purchasing offices. 1711
1712

(f)] Purchases on behalf of the Administration of rolling stock and other property peculiar to the operation of a transit system are not subject to Article 41, §§ 231G through 231K of the Code on State purchases generally.	1715 1716 1717 1718
7-604.	1720
(b) A provision specifying the minimum wages and stating the requirement that overtime be paid as provided in this section shall be CONSISTENT WITH THE PROVISIONS OF ARTICLE 21 AND THE REGULATIONS ADOPTED UNDER IT, AND SHALL BE:	1724 1725 1726
(1) Set out in each project advertisement for bids and in each bid proposal form; and	1729 1730
(2) Made a part of the contract covering the project, which contract is deemed to be a contract of the character specified in § 103 of the federal Contract Work Hours Standards Act.	1733 1734 1735
8-503.	1737
(b) The Administration, for itself or for any political subdivision of this State, and each political subdivision of this State may do anything necessary or desirable to comply with any term, condition, or provision and to obtain the benefits of any of the federal acts, CONSISTENT WITH THE PROVISIONS OF ARTICLE 21 AND THE REGULATIONS ADOPTED UNDER IT.	1740 1741 1742 1743 1744 1745
8-505.	1747
(b) All federal funds accepted under this section shall be accepted and spent by the Administration on the terms and conditions that the federal government requires, EXCEPT AS PROVIDED BY ARTICLE 21 AND THE REGULATIONS ADOPTED UNDER IT.	1751 1752 1753
8-614.	1756
(a) [(1)] All State highway projects shall be performed under the supervision of the Administration and subject to its approval, in accordance with plans and specifications prepared by the chief engineer and approved by the Administration.	1759 1760 1761 1762
[(2)] (B) To receive the full benefit of competitive bidding, the Administration, whenever practicable, shall separate major construction projects into two or more smaller contracts.	1765 1766 1767
[(b) If the cost of a State highway project will be more than \$25,000, the Administration shall publish a notice that:	1771 1772

(1) Accurately describes the project;	1775	
(2) Invites sealed bids on the project;	1778	
(3) States the time and place for opening the bids; and	1781	
(4) Reserves the right to reject any or all bids.	1784	
(c) The notice shall be published:	1787	
(1) For at least 2 successive weeks in one or more newspapers published or having general circulation in each county in which the project will be located; and	1790 1791 1792	
(2) For 3 successive issues in at least one daily newspaper published in Baltimore City.	1795 1796	
(d) (1) Each bid under \$1-million shall be accompanied by:	1800	
(i) A certified check of the bidder or a cashier's or treasurer's check drawn on a bank; or	1803 1804	
(ii) If the Administration approves, a bid bond with a surety that the Administration approves.	1807 1808	
(2) Each bid over \$1-million shall be accompanied by a bid bond with a surety that the Administration approves.	1811 1812	
(3) Each bid bond shall be conditioned that the bidder promptly will execute the contract and furnish the required bond for the completion of the work to be undertaken as provided in the contract specifications.	1815 1816 1817	
(e) The amount of the check or bid bond to accompany the bid shall be based on the total amount of the bid, as follows:	1821 1822	
Total Amount of Bid	Amount of Check	1825
Less than \$ 20,000.....	\$ 500	1828
\$ 20,000 to 49,999.99.....	1,000	1831
50,000 to 74,999.99.....	1,500	1834
75,000 to 124,999.99.....	2,000	1837
125,000 to 174,999.99.....	2,500	1840
175,000 to 224,999.99.....	3,000	1843
225,000 to 274,999.99.....	4,000	1846

275,000 to	324,999.99.....	5,000	1849
325,000 to	374,999.99.....	6,000	1852
375,000 to	424,999.99.....	7,000	1855
425,000 to	474,999.99.....	8,000	1858
475,000 to	524,999.99.....	10,000	1861
525,000 to	574,999.99.....	12,000	1864
575,000 to	624,999.99.....	15,000	1867
625,000 to	674,999.99.....	18,000	1870
675,000 to	724,999.99.....	22,000	1873
725,000 to	774,999.99.....	25,000	1876
775,000 to	824,999.99.....	30,000	1879
825,000 to	874,999.99.....	35,000	1882
875,000 to	924,999.99.....	40,000	1885
925,000 to	974,999.99.....	45,000	1888
975,000 to	1,000,000.....	50,000	1891
over 1,000,000.....	5% of the amount bid.		1894

(f) The bids shall be opened publicly at the time specified in the notice. The Administration shall award the contract for the work or for the supplies and materials required for the project to the lowest responsible bidder, unless, if permitted by law, the Administration determines that the interests of this State will be served better by awarding the contract to some other bidder.

(g) (1) After the contract is awarded to the successful bidder, the Administration shall return the checks of the unsuccessful bidders to them.

(2) After execution of the contract and bond by a successful bidder, the Administration shall return his check to him.

(h) (1) Promptly after a competitively bid contract is awarded, the successful bidder shall execute a formal contract, to be approved as to its form, terms, and conditions by the Administration, and execute and deliver to the Administration a good and sufficient bond, to be approved by the Administration, to the State of Maryland in an amount equal at least to the amount of the contract price. The Administration may not accept a bond unless the

obligors bind themselves to payment of all legally enforceable debts for labor and materials incurred by the bidder in the performance of the contracted for State highway project. 1922
1923
1924

(2) If any successful bidder fails to execute promptly the contract and the bond for the completion of the work as provided in the contract specifications, he forfeits the contract and, as the case may be: 1927
1928
1929

(i) The check that accompanied the bid shall be forfeited, as liquidated damages and not as a penalty; and 1932
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(ii) The bid bond is in default and the surety is liable for the full amount of the damage sustained by the Administration by reason of the bidder's failure to execute promptly the bond for completion of the work. 1936
1937
1938
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(i) (1) This section does not apply to any county road project in a county in which the Administration maintains county roads, if: 1943
1944

(i) The Administration decides to construct or improve any county road with its own forces out of county funds, regardless of their source; and 1947
1948
1949

(ii) The estimated cost of the project will not be more than \$12,500. 1952
1953

(2) This section does not apply to a contract for labor and material required to maintain any highway to its previous width and cross section.] 1956
1957
1958

8-639. 1960

(b) (1) The Secretary has [exclusive] authority, SUBJECT TO THE PROVISIONS OF ARTICLE 21 AND THE REGULATIONS ADOPTED UNDER IT, to approve the construction or modification of a railroad grade crossing or a change of crossing protection equipment and to impose conditions necessary to insure public safety at the crossing. 1964
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1966
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(2) No other approval, safety condition, or protective measure may be required by any public authority. 1970
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SECTION 10. AND BE IT FURTHER ENACTED, That Section(s) 231L of Article 41 - Governor - Executive and Administrative Departments, of the Annotated Code of Maryland be repealed. 1973
1974
1975

SECTION 11. AND BE IT FURTHER ENACTED, That Section(s) 7B of Article 78A - Public Works, of the Annotated Code of Maryland be repealed. 1977
1978

SECTION 12. AND BE IT FURTHER ENACTED, That Section(s) 5-214, 6-209, and 8-615 of Article - Transportation, of the Annotated Code of Maryland be repealed. 1980
1981

SECTION 13. AND BE IT FURTHER ENACTED, That if any provision of this Act or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Act which can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are declared severable. 1984
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1986
1987
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SECTION 14. AND BE IT FURTHER ENACTED, That all laws or parts of laws, public general or public local, including all laws or parts of laws enacted by the 1979 Session of the General Assembly, that are inconsistent with this Act, are repealed to the extent of the inconsistency. 1992
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SECTION 15. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 1979, contingent upon the taking effect of Chapter ___ of the Acts of ___ (Senate Bill 659) and if Chapter ___ does not become effective, this Act shall be null and void without the necessity of further action by the General Assembly. 1998
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S E N A T E O F M A R Y L A N D

9lr1033

No. 658

3800-04100

By: Senators Crawford, Cade, Cushwa, Douglass, Dypski, and 26
Rasmussen (Purchasing and Procurement Policies Task 27
Force)

Introduced and read first time: February 15, 1979 29

Assigned to: Budget and Taxation 31

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A BILL ENTITLED 36

AN ACT concerning 40

Architectural and Engineering Services - Procurement 43

FOR the purpose of changing the composition and method of 47
selection of persons for appointment by the Governor to 48
the General Professional Services Selection Board and
the Transportation Professional Services Selection 49
Board; changing the requirements for uniformity of the 50
rules and regulations of the Boards; changing
requirements for the manner of selection of 51
architectural and engineering services contracts by the 52
Boards and the criteria for waivers of selection by the
Boards; changing the manner of initiating and the 53
process of selecting these services by the Boards; 54
revising and correcting language; and relating to the
procurement of architectural and engineering services 55
in the State.

BY repealing and reenacting, with amendments, 57

Article 41 - Governor - Executive and 60
Administrative Departments 61
Section 231P(b)(1), 231R, 231T, 231U, and 231V 63
Annotated Code of Maryland 65
(1978 Replacement Volume and 1978 Supplement) 66

BY repealing and reenacting, with amendments, 69

Article - Transportation 72
Section 2-107, 2-303(b)(1), 2-305, and 2-309 74
Annotated Code of Maryland 76
(1977 Volume and 1978 Supplement) 77

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF 81
MARYLAND, That section(s) of the Annotated Code of Maryland 82
be repealed, amended, or enacted to read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Numerals at right identify computer lines of text.

Article 41 - Governor - Executive and Administrative Departments	85 86
231P.	89
(b) (1) The four permanent members of the Board are:	92
(i) The Secretary, ex officio, or his designee;	95
(ii) One member appointed from the Department by the Governor on recommendation of the Secretary, which member serves at the pleasure of the Governor; [and	98 99 100
(iii) Two members appointed from the general public by the Governor, at least one of whom is not an architect or engineer and each of whom serves a term of 4 years and until his successor is appointed and qualifies.]	103 104 105
(III) ONE MEMBER APPOINTED BY THE GOVERNOR FOR A TERM OF 4 YEARS AND UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES WHO IS A PRACTICING PROFESSIONAL ARCHITECT OR ENGINEER AND IS SELECTED FROM A LIST COMPILED JOINTLY BY THE MARYLAND SOCIETY OF THE AMERICAN INSTITUTE OF ARCHITECTS, THE CONSULTING ENGINEERS COUNCIL OF MARYLAND, AND THE MARYLAND SOCIETY OF LANDSCAPE ARCHITECTS; AND	107 108 109 110 111
(IV) ONE MEMBER APPOINTED BY THE GOVERNOR FROM THE GENERAL PUBLIC, WHO IS NOT A PRACTICING PROFESSIONAL ARCHITECT OR ENGINEER, WHO SERVES FOR A TERM OF 4 YEARS AND UNTIL HIS SUCCESSOR IS APPOINTED AND QUALIFIES.	113 114 115
231R.	117
[(a)] The Board shall adopt rules and regulations to carry out the provisions of this subtitle.	120 121
[(b)] The rules and regulations adopted by the Board under this section and those adopted by the Transportation Professional Services Selection Board under § 2-305 of the Transportation Article shall provide for substantially the same procedures.]	125 126 127 128
231T.	130
[(a)] A using authority that desires to procure architectural or engineering services costing over \$25,000 shall present the request to the Board at a public meeting.	134 135
(b) Reasonable and timely public notice shall be given of any request presented to the Board.	138 139

- (c) Before the Board approves any request for architectural or engineering services, it shall be satisfied that the services cannot be provided feasibly or economically by existing in-house resources.] 143
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145
- (A) THIS SUBTITLE APPLIES TO ANY USING AGENCY THAT DESIRES TO PROCURE ARCHITECTURAL OR ENGINEERING SERVICES OVER \$25,000. 147
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- (B) THE USING AUTHORITY SHALL CERTIFY TO THE BOARD THAT THE SERVICES CANNOT BE PROVIDED FEASIBLY OR ECONOMICALLY BY EXISTING IN-HOUSE RESOURCES. 150
151
- (1) THE BOARD SHALL REQUIRE UNIFORM AND CONSISTENT PUBLIC ANNOUNCEMENT OF REQUESTS FOR THE PROCUREMENT OF ARCHITECTURAL OR ENGINEERING SERVICES. 153
154
- (2) IN ADDITION, AN ANNOUNCEMENT OF EACH REQUEST SHALL BE MAILED TO EACH PERSON THAT REQUESTS NOTIFICATION ON A SPECIFIC PROJECT. 156
157
- (C) EACH ANNOUNCEMENT SHALL: 159
- (1) DESCRIBE GENERALLY THE ARCHITECTURAL AND ENGINEERING SERVICES TO BE PROCURED; AND 161
- (2) INDICATE HOW INTERESTED PERSONS MAY RECEIVE INFORMATION ABOUT THE PROCUREMENT. 163
- 231U. 165
- [(a) (1) The Board shall require uniform and consistent public announcements of all its approvals of requests for the procurement of architectural or engineering services. 169
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- (2) In addition, an announcement of the approval of each request shall be mailed to each person that requests notification. 173
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- (b) Each announcement shall: 177
- (1) Describe generally the architectural and engineering services to be procured; and 180
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- (2) Indicate how interested persons may receive information about the procurement. 184
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- (c) On request, the Board shall give each interested person a comprehensive description of the nature and scope of the professional services to be procured. The using authority making the procurement request shall prepare the description.] 189
190
191
- (A) THE BOARD SHALL HOLD A PUBLIC MEETING TO ACCEPT, POSTPONE FOR CAUSE, OR REJECT THE PERSON RECOMMENDED UNDER 193
194

THE SCREENING PROCESS TO BE AWARDED A CONTRACT FOR ARCHITECTURAL OR ENGINEERING SERVICES.	195
(B) THE BOARD SHALL PROVIDE REASONABLE AND TIMELY NOTICE OF THIS PUBLIC MEETING.	197
231V.	199
(a) (1) IT IS THE PUBLIC POLICY OF THIS STATE THAT COMPETITIVE PROCUREMENT OF ALL ARCHITECTURAL AND ENGINEERING SERVICES SHALL BE THE PREFERRED METHOD FOR SELECTING CONTRACTORS.	202 203 204
[(1)] (2) The recommendation of the Board for the procurement and award of each contract for architectural and engineering services costing over \$25,000 shall:	206 207 208
(i) Be made on a competitive basis; and	211
(ii) Include an evaluation of technical and price proposals from two or more persons.	214 215
[(2)] (3) Neither the technical proposal nor the price proposal may be the sole criterion in making a recommendation on a competitive basis.	218 219
(b) (1) The Board may waive the requirements of subsection (a) of this section if[:	222 223
(i) It determines in writing that the] IT DETERMINES IN WRITING THAT:	226
(I) THE architectural and engineering services cannot be defined so completely as to lend themselves to the procedures set forth in subsection (a) of this section;	228 229 230
(ii) The public health and safety is endangered after a natural disaster or act of God;	233 234
(iii) A state of emergency is declared by the Governor; [or]	237
(iv) A bona fide single source of supply or a proprietary product or process is required[.] ; OR	240 241
(V) THERE IS SOME OTHER REASON TO USE ONE OF THE OTHER AUTHORIZED METHODS WHICH IS SO COMPELLING AS TO OVERRIDE THE GENERAL PUBLIC POLICY IN FAVOR OF COMPETITIVE PROCUREMENT.	243 244 245
(2) Each waiver and the reasons for it shall be[:	248
(i) Documented and reported to the] DOCUMENTED AND IMMEDIATELY REPORTED TO THE:	251

30 days]; and	(I) Legislative Policy Committee [within	253
	(ii) [Documented and immediately reported	256
to the] Maryland Register for printing in the next available	issue.	257
	Article - Transportation	260
2-107.		263
(a) The following units are in the Department:		266
(1) State Aviation Administration;		269
(2) Maryland Port Administration;		272
(3) Mass Transit Administration;		275
(4) State Highway Administration;		278
(5) Motor Vehicle Administration;		281
(6) Board of Airport Zoning Appeals;		284
(7) State Roads Commission;		287
(8) Transportation Professional SERVICES		290
Selection Board;		
(9) Maryland Transportation Commission; and		293
(10) Board of Contract Appeals.		296
2-303.		298
(b) (1) The four permanent members of the Board		301
are:		302
designee;	(i) The Secretary, ex officio, or his	305
	(ii) One member appointed from the	308
Department by the Governor on recommendation of the		309
Secretary, which member serves at the pleasure of the		310
Governor; [and		
(iii) Two members appointed from the		313
general public by the Governor, at least one of whom is not		314
an architect or engineer and each of whom serves a term of 4		315
years and until his successor is appointed and qualifies.]		
(III) ONE MEMBER APPOINTED BY THE GOVERNOR		317
FOR A TERM OF 4 YEARS AND UNTIL A SUCCESSOR IS APPOINTED AND		318
QUALIFIES WHO IS A PRACTICING PROFESSIONAL ARCHITECT OR		319

ENGINEER AND IS SELECTED FROM A LIST COMPILED JOINTLY BY THE MARYLAND SOCIETY OF THE AMERICAN INSTITUTE OF ARCHITECTS, THE CONSULTING ENGINEERS COUNCIL OF MARYLAND, AND THE MARYLAND SOCIETY OF LANDSCAPE ARCHITECTS; AND

(IV) ONE MEMBER APPOINTED BY THE GOVERNOR FROM THE GENERAL PUBLIC, WHO IS NOT A PRACTICING PROFESSIONAL ARCHITECT OR ENGINEER, WHO SERVES FOR A TERM OF 4 YEARS AND UNTIL HIS SUCCESSOR IS APPOINTED AND QUALIFIES.

2-305.

[(a)] The Board shall adopt rules and regulations to carry out the provisions of this subtitle.

[(b)] The rules and regulations adopted by the Board under this section and those adopted by the General Professional Services Selection Board under Article 41, § 231R of the Code shall provide for substantially the same procedures.]

2-309.

(a) (1) IT IS THE PUBLIC POLICY OF THIS STATE THAT COMPETITIVE PROCUREMENT OF ALL ARCHITECTURAL AND ENGINEERING SERVICES SHALL BE THE PREFERRED METHOD FOR SELECTING CONTRACTORS.

[(1)] (2) The recommendation of the Board for the procurement and award of each contract for architectural and engineering services costing over \$25,000 shall:

(i) Be made on a competitive basis; and

(ii) Include an evaluation of technical and price proposals from two or more persons.

[(2)] (3) Neither the technical proposal nor the price proposal may be the sole criterion in making a recommendation on a competitive basis.

(b) (1) The Board may waive the requirements of subsection (a) of this section if:

(i) It determines in writing that the] IT DETERMINES IN WRITING THAT:

(I) THE architectural and engineering services cannot be defined so completely as to lend themselves to the procedures set forth in subsection (a) of this section;

(ii) The public health and safety is endangered after a natural disaster or act of God;

(iii) A state of emergency is declared by the Governor; [or]

(iv) A bona fide single source of supply or a proprietary product or process is required[.]; OR 380
381

(v) THERE IS SOME OTHER REASON TO USE ONE 383
OF THE OTHER AUTHORIZED METHODS WHICH IS SO COMPELLING AS TO 384
OVERRIDE THE GENERAL PUBLIC POLICY IN FAVOR OF COMPETITIVE 385
PROCUREMENT.

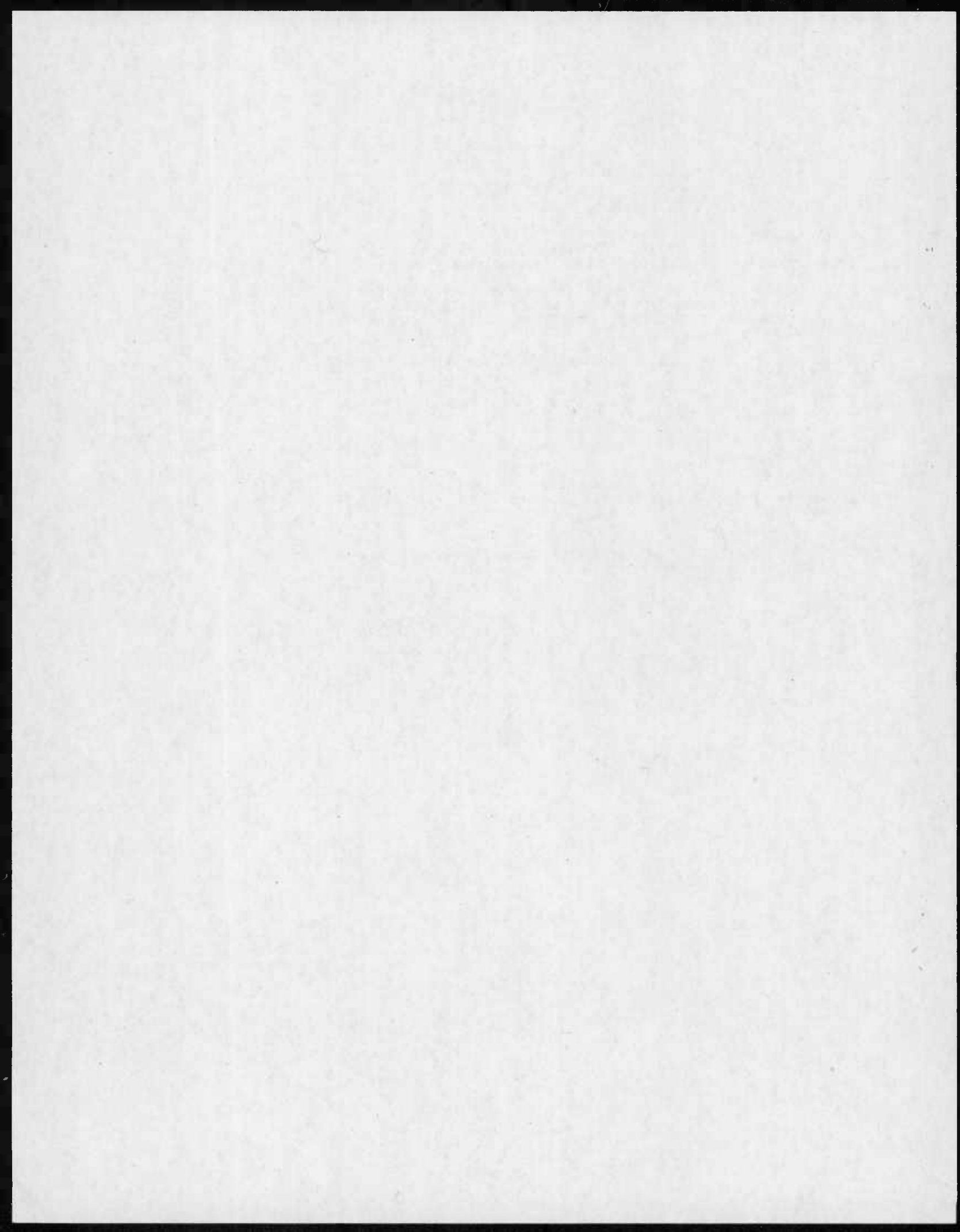
(2) [each] EACH waiver and the reasons for it 388
shall be[:

(i) documented and reported to the] 391
DOCUMENTED AND IMMEDIATELY REPORTED TO THE:

(I) Legislative Policy Committee [within 393
30 days]; and

(ii) [documented and immediately reported 396
to the] Maryland Register for printing in the next available 397
issue.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act 400
shall take effect July 1, 1979. 401



SENATE JOINT RESOLUTION No. 69

91r3825

3800-02100

 By: Senators Crawford, Cade, Cushwa, Douglass, Dypski, and 25
 Rasmussen (Purchasing and Procurement Policies Task 26
 Force)
 Introduced and read first time: March 5, 1979 28
 Assigned to: Rules 30
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SENATE JOINT RESOLUTION

A Senate Joint Resolution concerning

State Procurement - Property Disposal and 42
 Enterprise Activities 43

FOR the purpose of requesting the Legislative Policy 47
 Committee to continue the Purchasing and Procurement 48
 Policies Task Force to review, study, and make
 recommendations on State policies concerning enterprise 49
 activities and disposal of certain property.

WHEREAS, The special, joint, Purchasing and Procurement 52
 Policies Task Force was created on May 29, 1977 by the 53
 Legislative Policy Committee pursuant to Resolution 28 of 54
 the Acts of 1977 with the objective of bringing greater
 coordination, simplicity, and uniformity to the State's 55
 purchasing and procurement processes and to consolidate and 56
 integrate the diverse purchasing and procurement laws in the 57
 Annotated Code;

WHEREAS, The 12-member legislative Task Force has 59
 introduced various procurement legislation during the 1979 60
 session which would satisfy the original charter of the 61
 Task Force, one of which would create a new Article 21
 entitled "State Procurement of Supplies, Services and 62
 Construction";

WHEREAS, During the past several public hearings of the 64
 Task Force there has surfaced several policy questions among 65
 the legislative members concerning whether or not to include 66
 in the new Proposed Procurement Article provisions
 concerning the sale or other means of disposal of various 67
 properties owned by the State;

WHEREAS, It was subsequently decided that provisions 69
 relating to property disposal be removed from the 70
 Procurement legislation;

WHEREAS, Certain enterprise activities such as the 72
 granting of concessions, the leasing of State-owned 73
 facilities or property and other income producing functions 74

EXPLANATION:

Numerals at right identify computer lines of text.

engaged in by State agencies were briefly reviewed by the Task Force but not included in the omnibus legislation;

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WHEREAS, Although a cursory review was performed by the Task Force into these issues, insufficient time and unavailable resources curtailed these investigations by the members;

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WHEREAS, There is a need for the review and possible incorporation into the proposed Procurement Article of various provisions of the Code concerning property disposal and enterprise functions; and be it further

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RESOLVED BY THE GENERAL ASSEMBLY OF MARYLAND, That the General Assembly requests the Legislative Policy Committee to reappoint the Purchasing and Procurement Policies Task Force for the purpose of reviewing, studying and making recommendations on public policies of the State concerning property disposal and enterprise functions engaged in by the State; and be it further

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RESOLVED, That copies of this Joint Resolution be sent to the Honorable James Clark, Jr., and the Honorable Benjamin L. Cardin, Co-Chairmen of the Legislative Policy Committee.

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